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CONTRIBUTIONS TO INTERNATIONAL LAW
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Edited by ARNOLD D. MCNAIR, C.B.E., LL.D.

Fellow of Gonville and Caius College and
Lecturer in the University of Cambridge

THE MANDATE FOR PALESTINE

CONTRIBUTIONS TO INTERNATIONAL LAW AND DIPLOMACY.

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THE MANDATE FOR PALESTINE

A CONTRIBUTION TO
THE THEORY AND PRACTICE OF
INTERNATIONAL MANDATES

BY

J. STOYANOVSKY

DOCTEUR EN DROIT (PARIS), LL.D. (LONDON)

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EDITOR'S PREFACE

I THINK that readers of Dr. Stoyanovsky's *La Théorie Générale des Mandats Internationaux* (Paris, 1925) will welcome this further work from his pen. There was perhaps no part of the Covenant that called forth more derision from the cynical and the worldly-wise than the Mandates System contained in Article XXII, which was scoffed at as a mere cloak for 'old-fashioned' annexation. Dr. Stoyanovsky's monograph, which is certainly penetrating in its analysis, and, so far as I can judge, is marked by a high degree of objectivity, will enable the reader to judge how far at any rate in the case of this Mandate the ideas and ideals latent in the Covenant are being translated into reality. The Mandates System represents the irruption of the idealist into one of the periodical world settlements which have in the past lain too much in the hands of so-called 'practical men.' It is too early yet to say whether the idealist is going to be justified or whether his ideal will fail and be smothered. My own belief is that, at any rate in the case of the Palestine Mandate, the idealist is 'making good,' because the men who are conducting the experiment have a sincere faith in the ideal and the administrative skill to put it into practice.

ARNOLD D. MCNAIR.

CAMBRIDGE, June 1928.

AUTHOR'S PREFACE

THIS work has grown out of a dissertation for the degree of Doctor of Laws of the University of London. It is an attempt to examine the peculiar character of the Palestine mandate in the light of the general principles of the mandates system as a whole. Article XXII of the Covenant of the League of Nations lays down that the well-being and development of such peoples as are not yet able to stand alone form a sacred trust of civilization, and while applying this guiding principle to the local inhabitants, the Palestine mandate provides for the extension of its scope to the Jewish people on the ground of the historical connection which is recognized as existing between this people and Palestine. This is, in short, what constitutes the peculiarity of the mandate with which we are here concerned.

The fact that one can treat questions of this kind from a legal point of view without being considered as a mere 'ideologist'—save perhaps by a few 'realists' of the older school—may be regarded as an indication both of the development which has taken place in international law since the Great War, and of the direction which this development has followed and is likely to follow in future. This is mainly due to the influence of what has sometimes been termed '*la force des idées*' in international relations, and it may indeed be said that it is by these 'ideas' that the progress of international law is largely guided. Thus the protection of minorities,

the mandates system, and the League of Nations itself, which only recently were no more than 'ideas,' form to-day an integral part of international law. Thus, again, the 'idea' of a national home for the Jewish people has ultimately found its way into international law and now constitutes an integral part of the Palestine mandate.

This work is neither a defence nor a criticism of the Palestine mandate, but an exposition of what it actually seems to mean in theory and to be in practice. It has been said of this mandate—and this is probably also true of the others—that it was easier to write than to read; to try to assist in its reading by interpreting its provisions and following up the effect they have been given by legislation and otherwise is the object of this monograph. But while interpretation of necessity has its limits in the letter of the texts to which it applies, construction has its own in the spirit of these texts. Neither the one nor the other may be allowed to overstep these limits without leaving the domain of law for that of politics or diplomacy, and it has throughout been the preoccupation of the author to confine the scope of this work, in so far as this is possible, to the legal aspects of the various questions raised by the Palestine mandate. While one can understand and sympathize with those who may be inclined to mistrust what they call a 'lawyer's treaty,' it can hardly be denied that the legal interpretation of international instruments provides an additional guarantee for the safeguard of such rights and interests as may be involved.

This monograph is divided into an introductory chapter on the historical antecedents of the Palestine man-

date, and two parts, the first of which deals with the Jewish national home and the second with the mandate proper. This division was adopted mainly with a view to emphasizing the dual aspect of the Palestine mandate and the special characteristics of the two sets of obligations assumed by the Mandatory in virtue of its provisions. The obligations resulting from the national home policy and the mandate proper are by no means inconsistent with each other, being equally based, as this book has attempted to show, upon the very principles which are at the foundation of the League of Nations itself.

I wish to express my sincere thanks to Mr. Arnold D. McNair, C.B.E., LL.D., Fellow of Gonville and Caius College and Lecturer in the University of Cambridge, formerly Reader in Public International Law in the University of London, for the interest he has so kindly taken in this work, and for the help and advice he was always ready to give me. As Editor of the Series of Contributions to International Law and Diplomacy to which this book belongs, he went over the proofs, and I am indebted to him for his suggestions.

I have also to thank Messrs. Longmans, Green & Co. and Messrs. T. & A. Constable for their helpful co-operation, as well as the Publication Fund of the University of London for a grant in aid of the publication of this work.

J. STOYANOVSKY.

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<i>A.C.</i>	. . .	Appeal Cases (Law Reports).
<i>A.J.</i>	. . .	American Journal of International Law.
<i>B.Y.</i>	. . .	British Year-book of International Law.
<i>Colonial</i>	. . .	Non-Parliamentary Publications issued by the Colonial Office.
<i>Cmd.</i>	. . .	Papers presented to Parliament by Command of His Majesty.
<i>J.C.L.</i>	. . .	Journal of Comparative Legislation and Inter- national Law.
<i>L.Q.R.</i>	. . .	Law Quarterly Review.
<i>M.S.</i>	. . .	Monthly Summary of the League of Nations.
<i>O.G.</i>	. . .	Official Gazette of the Government of Palestine.
<i>O.J.</i>	. . .	Official Journal of the League of Nations.
<i>P.C.</i>	. . .	Permanent Court of International Justice. Series A—Collection of Judgments. Series B—Advisory Opinions. Series C—Acts and Documents relating to Judgments and Advisory Opinions given by the Court.
<i>P.D.</i>	. . .	Parliamentary Debates. (H. of C.)—House of Commons. (H. of L.)—House of Lords.
<i>P.M.C.</i>	. . .	Permanent Mandates Commission.
<i>R.A.</i>	. . .	Records of the Assemblies of the League of Nations. (C) Committee Meetings. (P) Plenary Meetings.
<i>R.G.</i>	. . .	Revue Générale de Droit International.
<i>T.S. (L. of N.)</i>	. . .	Treaty Series of the League of Nations.

INTRODUCTORY

THE EASTERN QUESTION AND THE GREAT WAR

THE general state of the Turkish Empire during the nineteenth and the beginning of the twentieth centuries was a result of the inherent weakness of an empire which formed a largely artificial and purely geographical link between three continents, different races and religions, and a great variety of nationalities. The survival of this empire, in spite of the awakening self-consciousness of the nationalities which it comprised, can be explained, on the one hand, by the moral and religious power of Islam, on the other, by the rivalries of certain European States. Turkey has exercised considerable influence over the Mohammedan world, and in virtue of this fact has commanded a certain amount of respect on the part of these States. It was the only Mohammedan independent empire under the sovereignty of a Sultan who was, at the same time, the religious chief of Islam. But although the moral and religious power of Islam was a determining factor in the preservation of the Turkish Empire, yet its importance as an international force was comparatively small, the different Mohammedan territories having been politically divided into colonies, protectorates, zones of influence, etc., which were shared among various European Powers. The large masses of Mohammedans, scattered and largely ignorant as they were, could not have been of any great help to the Turkish Empire had its partition been decided upon by the interested Powers. This decision,

however, was never taken, owing to the permanent state of rivalry and suspicion which was one of the most characteristic features of European diplomacy in regard to what was known as the 'Eastern Question.' Without entering into details, it will be sufficient to mention the opposition of interests between Great Britain and Russia in the Straits; the antagonism between Great Britain and France on the Mediterranean shores of Turkey, and between various Powers and Germany in Mesopotamia in connection with the famous '*Bagdadbahn*' question; and the rivalry between Italy and Greece with regard to the Islands and the Eastern shores of the Aegean Sea—to say nothing of the Balkans with their inextricable complications. All these rivalries are notorious in spite of the fact that they were exercised under cover of the most secret of diplomacies.

The situation was rendered still more complicated by the revival of the old theory of 'balance of power' which kept Europe divided into two hostile groups during the last few decades preceding 1914. To each of these groups Turkey was an all-important asset in the eventuality of war, not so much on account of her military strength as because of her geographical and strategic position. The correctness of this view was proved during the Great War when, owing to the possession of the Straits by Turkey, the Allies could not secure the necessary geographical unity, while the Central European Powers formed a united block. This geographical importance of Turkey, from the point of view of the European balance of power, may thus be considered as a contributory factor in the preservation of its empire. Turkey's entry into the war proved to be the beginning of the end of the Ottoman Empire. What could not be achieved by separate action of rival Powers was rendered possible by the creation of common interests in the Great War.

INTER-ALLIED NEGOTIATIONS

THE SECRET TREATIES AND AGREEMENTS

As early as March 1915 a secret agreement, the first of a series, was arrived at between Russia, Great Britain and France for the annexation by Russia of the city of Constantinople, the Straits and adjoining territories, coasts and islands, and the recognition of the 'rights of England [Great Britain] and France in Asiatic Turkey, to be defined by special agreement between France, England [Great Britain] and Russia.' ¹

The following month (April 1915) the Treaty of London was signed by the above-mentioned Powers and Italy. With regard to Turkey, Article 8 of the treaty provides that 'Italy will obtain all the twelve islands (Dodekanese), now occupied by her, in full possession,' ² and Article 9 provides that

'France, Great Britain and Russia admit in principle the fact of Italy's interest in the maintenance of political balance of power in the Mediterranean and her rights, in case of a partition of Turkey, to a share equal to theirs in the basin of the Mediterranean—viz. in that part of it which adjoins the province of Adalia—in which Italy has already acquired special rights and interests defined in the Italo-British Convention. . . . Italy's interests will likewise be taken into consideration in case the Powers should also maintain the territorial integrity of Asiatic Turkey for some future period of time and if they should only proceed to establish among themselves spheres of influence. . . . ' ³

We have seen that the first agreement entered into by France, Great Britain and Russia in March 1915 provided for the conclusion of a subsequent agreement

¹ F. Seymour Cocks, *The Secret Treaties and Understandings*, p. 20; see also C. A. McCurdy, *The Truth about the 'Secret Treaties,'* p. 13.

² *The Secret Agreements*, The National Labour Press, p. 9.

³ *Ibid.*, pp. 9-10.

with a view to defining the respective rights of these Powers in the partition of Asiatic Turkey. This contemplated agreement was concluded in the spring of 1916. By its provisions Russia was to obtain the provinces of Erzerum, Trebizond, Van, Bitlis, and territory in the southern part of Kurdistan; France was to acquire the coastal strip of Syria, the vilayet of Adana, and the territory lying to the east and north-east up to the new Russian frontier; Great Britain's share was to consist of the southern part of Mesopotamia with Bagdad, and of the ports of Haifa and Acre in Palestine, these being considered the natural outlet of Mesopotamia to the Mediterranean. The agreement further provided that 'the zone between the French and the British territories forms a Confederation of Arab States or one independent Arab State.'¹

Special reference is made in this agreement for the first time to the future of Palestine, in the following terms :

'With a view to securing the religious interests of the Entente Powers, Palestine, with the Holy Places, is separated from Turkish territory and subjected to a special *régime* to be determined by agreement between Russia, France and England [Great Britain].'²

Thus, as far back as the spring of 1916 Palestine appears to have been excluded, in virtue of an international agreement, from the contemplated Arab State or Confederation. The above provision clearly indicates that the 'special *régime*' to be set up in Palestine was contemplated 'with a view to securing the religious interests of the Entente Powers,' and not on account of any policy to which the British Government may have subsequently pledged themselves. This point seems to be of special importance in view of the political contro-

¹ Italy's consent to this provision was given in the Treaty of London, Art. 12.

² F. Seymour Cocks, *op. cit.*, p. 46; see also the *Manchester Guardian* of Jan. 19, 1918.

versies raised in connection with the Jewish national home policy, which was not inaugurated till shortly before the end of 1917.

THE NEGOTIATIONS BETWEEN GREAT BRITAIN AND THE SHERIF OF MECCA

These two provisions, concerning the contemplated Arab State on the one hand, and Palestine on the other, were set forth in detail in the subsequent Franco-British agreement of May 1916, which will be examined later. In the meantime, and simultaneously with the inter-allied negotiations, the British Government, represented by Sir Henry MacMahon, then High Commissioner in Egypt, were negotiating with the Sherif of Mecca the conditions under which he would revolt against Turkey and join the Allies in the Great War. The beginning of these negotiations dates as far back as the middle of 1915, and the original demands of the Sherif¹ were in part of a nature to clash with some of the understandings reached by the Allies in connection with the contemplated partition of Turkey. Being secretly pledged to France and Russia, the British Government could not accept these demands, and the letter addressed by Sir Henry MacMahon to the Sherif of Mecca on October 24, 1915, while undertaking in principle to recognize and to support Arab independence—conditional on their revolt—makes a reservation with regard to the boundaries within which this independence was to be recognized. The reservation excluded from the scope of what subsequently became known as the 'British pledges to

¹ 'To acknowledge the future independence of the regions bounded on the north by a line starting from Mersina and passing through Adana to the 37th parallel of latitude, which it was to follow through Birijik, Urfa and Mardin to the Persian frontier; on the east by the

Persian frontier to the Gulf of Basra; on the south by the Indian Ocean, with the exception of Aden, which was to remain British; on the west by the Red Sea and the Mediterranean.'—J. de V. Loder, *The Truth about Mesopotamia, Palestine and Syria*, pp. 19-20,

the Arabs' the provinces of Bagdad and Basra and the territories where Great Britain was not 'free to act without detriment to the interests of France,' or those 'lying to the west of the district of Damascus.'¹ Owing to the fact that the parallel and simultaneous negotiations of the British Government with the Allies and the Sherif of Mecca were most secretly conducted, and that the whole of the correspondence relating to these negotiations has not been published, it is quite impossible to ascertain what was at that time—October 1915—the stage reached by the inter-allied *pourparlers*, and what was then implied in the reservation regarding the territories where Great Britain was not 'free to act without detriment to the interests of France.' If, however, an inference as to the scope and nature of these negotiations may be drawn from the fact that the agreement arrived at a few months later (in the spring of 1916) contemplated a special *régime* for Palestine or—in the language of the Franco-British agreement—an 'international administration,' then it may safely be said that Palestine was also included in the above reservation relating to the interests of France. There can indeed be little doubt that the British Government could not in good faith have negotiated with the Allies a treaty contemplating the establishment of an international administration in Palestine and at the same time pledged itself to the inclusion of Palestine in the contemplated Arab State or Confederation. The promise made to the Sherif of Mecca by Sir Henry MacMahon in his above letter was, as pointed out,

'subject to a reservation made in the same letter, which excluded from its scope, among other territories, the portion of Syria lying to the west of the district of Damascus. This reservation has always been regarded

¹ *Times*, Sept. 11, 1919: Colonel T. E. Lawrence's letter to the Editor; and *Cmd.* 1700 (1922), p. 20,

by His Majesty's Government as covering the vilayet of Beirut and the independent sandjak of Jerusalem. The whole of Palestine west of the Jordan was thus excluded from Sir H. MacMahon's pledge.' ¹

On the other hand, it was contended by an Arab delegation which came to London for the purpose of discussing the proposed Palestine Constitution, that the above reservation referred only to the coastal strip of Syria lying to the west of the districts of Damascus, Homs, Hama and Aleppo ('the four towns' as they were called), thus excluding Palestine, which lies to the west of the 'vilayet of Syria' and not of the 'district of Damascus' properly speaking. This, however, can hardly be considered as a decisive argument, since the controversy turned purely on the meaning of words like 'district' and 'vilayet,' which could have been used indifferently, in the absence of any clear definition or standard rendering.

Although the British negotiations with the Arabs never reached the stage of definite agreement, they nevertheless induced them to revolt against Turkey in June 1916. There is no doubt that a strong moral obligation, if not a strictly legal one, was assumed by Great Britain towards the Sherif. He was subsequently recognized as King of an independent Hedjaz and given the right to intervene in the negotiations which took place during and after the Great War regarding the future of Mesopotamia, Syria and Palestine, provinces which were to be detached from Turkey. Unlike the Hedjaz, however, these territories were made the object of a Franco-British agreement, known as the Sykes-Picot Agreement of May 1916. Owing to its direct bearing on the events which followed, this document has to be examined more closely, especially because this is the only agreement to which Russia has not been a party,

¹ *Cmd.* 1700 (1922), p. 20.

and consequently no legal objection could be raised to its validity even after the repudiation of the former agreements by the revolutionary Government in Russia.

THE SYKES-PICOT AGREEMENT

In virtue of this agreement two zones, indicated as the red zone and the blue zone, were to be annexed by Great Britain and France respectively. The first was to include southern Mesopotamia with Bagdad, and the second the coastal strip of Syria, Cilicia and the territories lying to the north-east up to the contemplated Russian frontier. Article 2 of the agreement stipulated that

‘in the blue zone, France, and in the red zone, Great Britain, shall be authorized to establish such direct or indirect administration or such control as they desire and shall judge it expedient to establish after reaching an understanding with the Arab State or Confederation of Arab States.’

Between these two zones two further zones were established, known as zones A—to the north—and B—to the south. With regard to these, Article 1 provided that

‘France and Great Britain are disposed to recognize and protect an independent Arab State or a Confederation of Arab States . . . under the suzerainty of an Arab chief. In the A zone, France, and in the B zone, Great Britain, shall have a priority right on local enterprises and loans. In the A zone, France, and in the B zone, Great Britain, shall alone supply advisers or foreign officials at the request of the Arab State or Confederation of Arab States.’

These zones were therefore to constitute what was known in pre-war colonial policy as ‘spheres of influence.’

A fifth zone—the brown one—established by the Sykes-Picot Agreement was to cover the central part of

Palestine with Jerusalem (except the ports of Haifa and Acre 'accorded to Great Britain' in virtue of Article 4). In this zone, says Article 3 of the agreement,

'shall be established an *international administration*¹ whose form shall be decided after consultation with Russia and subsequently in accord with the other Allies and the representatives of the Sherif of Mecca.'

There can be little question that the spirit in which the Sykes-Picot Agreement was negotiated and concluded is largely that of the old methods of colonial policy and territorial annexation. The fact that the creation of an independent Arab State or a Confederation of Arab States is provided for hardly affects this view, especially as the provisions of the above Article 1 were mainly looked upon as a war necessity arising out of the negotiations between Great Britain and the Sherif of Mecca with a view to inducing him to revolt against Turkey. Moreover, the two contracting Powers took the precaution to 'protect' the so-called independent State and to place it under the mere 'suzerainty' of an Arab chief, *i.e.* under a purely nominal authority, reserving the real power for themselves. The division of the contemplated Arab State or Confederation into two zones of influence, placed under different Powers, amounts to nothing less than a death sentence passed upon it before its creation. Both in its spirit and letter the agreement gives every ground for belief that the annexation of the blue and red zones was contemplated as a preliminary to the annexation of A and B zones by the Powers respectively entrusted with their 'protection.' The existence of French and British advisers and officials in the A and B zones respectively would greatly facilitate this further operation; in the meantime the exclusion of all other Powers from the benefits of the agreement was provided for in Articles 9 and 10.

¹ The italics are the author's.

The main object of France and Great Britain in the agreement of May 1916 was to establish a new balance of power in the Near East. This intention is sufficiently demonstrated by the division of the territory into parallel and proportional, if not equal, zones, by the internationalization of Palestine and by provisions such as those concerning the free ports of Alexandretta and Haifa ; a comparison between the two paragraphs of Article 5 dealing with the economic and commercial *régime* of these ports shows clearly the *do ut des* spirit of the agreement.

Although the Sykes-Picot Agreement was never expressly repudiated or revised, and although its provisions greatly influenced the subsequent decisions taken in respect of the territories which were to be detached from Turkey, yet the impossibility of applying it without modification was more and more realized as the war went on. New ideas and conceptions began to spread among the belligerent peoples and Governments ; the old practice of annexations was condemned, not only by theorists and international lawyers but also by prominent statesmen. This change was mainly due to the entry of the United States into the war, and to the personal action of President Wilson, as well as, on the other side, to the Russian revolution. A strong case for the revision of war aims was created by the fact that the United States entered the war not in order to help the Allies to carry out their original war aims, but with a view to contributing towards the abolition of the very state of affairs which had rendered such war aims possible. As to Russia, the repudiation by its revolutionary Government of all the secret agreements to which its predecessor was a party considerably weakened the position of those who opposed the revision of Allied war aims.

Towards the end of 1917 Lord Robert Cecil found it

necessary to state in the House of Commons that 'such understandings as had been arrived at by the Powers respecting Asia Minor did not involve annexations,'¹ and a few weeks later Mr. Lloyd George, then Prime Minister, made the following statement :

'Mesopotamia, Syria and Palestine are in our judgment entitled to a recognition of their separate national conditions. . . . Much has been said about the arrangements we have entered into with our Allies on this and other subjects. I can only say that as new circumstances like the Russian collapse and the separate Russian negotiations have changed the conditions under which those arrangements were made, we are, and always have been, perfectly ready to discuss them with our Allies.'²

These statements, it is true, cannot be considered as in themselves a repudiation of the secret agreements, but they contain a definite invitation to undertake the revision of them. They clearly indicate the change of mind which had taken place in the spheres of the British Government with regard to the agreements and the possibilities of their application.

Two special reasons of a more local character may also be considered as having contributed towards this change of attitude ; one concerns the Arab territories and the other is peculiar to Palestine.

1. However 'inconclusive'³ the negotiations of Great Britain with the Arabs may have been, they had a great moral and psychological effect on the development of an Arab sense of nationalism. The influence of these negotiations on the Arabs, and the hopes they rightly or wrongly awakened among them, cannot be denied. It is true that the proposed creation of an Arab State in the Sykes-Picot Agreement showed the readiness of Great Britain and France to give partial effect

¹ F. Seymour Cocks, *op. cit.*, p. 47, note.

² *Ibid.*, p. 47.

³ *P. D.* (H. of C.), vol. 147 (1921), col. 461.

to the negotiations of the former with the Sherif of Mecca, and in the limits of this agreement an international obligation, in the legal sense of the term, certainly existed towards him. But we have seen what the formula of the proposed Arab independence was to be. As the war went on, the Allies realized that this formula—based as it was on annexationist policy—might give rise to more difficulties than had ever been experienced in the Near East under the Turkish *régime*. They consequently followed the general current of new international ideas and revised the spirit, if not the letter, of the 1916 agreement, in the Franco-British declaration to the peoples of Syria and Mesopotamia, made on November 7, 1918, which in one part runs as follows :

‘The end aimed at by France and Great Britain in their carrying out of the war in the East . . . is the complete and final enfranchisement of the peoples . . . and the establishment of national governments and administrations, drawing their authority from the initiative and free choice of the native populations. . . . Far from wishing to impose upon the populations of these regions any particular institutions, the Allies have no other desire than to assure by their support and by an effective assistance the normal functioning of the governments and administrations which the populations have freely given themselves.’

It is not merely a ‘change of form,’ as has been said,¹ but essentially a change of policy. It constitutes a breach with the old practice of annexation and the inauguration of a new spirit, the very same which manifested itself somewhat later in the mandates system.²

¹ J. de V. Loder, *op. cit.*, p. 33.

² Speaking of the Sykes-Picot Agreement, the *New Statesman* said: ‘These purely imperialistic conceptions were indeed gradually modified. A different spirit breathes through Stanley Maude’s Proclamation of March 19, 1917, to the people of the

Baghdad Vilayet; and the declarations publicly made by Great Britain and France immediately after the Armistice embody a definite pledge to assist the establishment of native governments in Syria and Mesopotamia’ (*The New Statesman*, vol. xv., July 10, 1920, p. 385).

2. Palestine, as we have seen, had been divided up by the agreement of 1916. The south was to form part of the zone B under British influence, the north, of the blue zone annexed by France, and the ports of Haifa and Acre were to be 'accorded to Great Britain.' The centre of Palestine—the brown zone—was to be placed under international administration. Now these provisions, both the geographical and the administrative, could hardly be reconciled with the policy adopted by the British Government in their declaration of November 2, 1917, since known as the Balfour Declaration, where they pledge themselves, subject to certain conditions, 'to use their best endeavours to facilitate the establishment in Palestine of a national home for the Jewish people.' To divide the territory of the national home is to curtail the national home itself, and to internationalize the administration of this territory is to render the establishment of a national home well-nigh impossible. An international organ with essentially 'functional' attributions may 'work smoothly and with marked success. It has been proved by the various international bodies (The Danube Commission, the Postal Union, etc., and of late by the Secretariat of the League of Nations) that international co-operation can be satisfactorily secured for this end. But in the case of 'territorial' administrations all attempts at internationalization have failed whenever and wherever made.¹ The Balfour Declaration added a new object to the administration of Palestine. Palestine by it was recognized not only as a Holy Land in which religious rights and interests alone had a place, but also as a land where national rights and interests were to be safeguarded. This is no more a task which can be successfully assumed by international organs. As Lord Cromer says²:

¹ See J. C. Smuts, *The League of Nations, a Practical Suggestion*, p. 18.

² Quoted by G. L. Beer, *African Questions at the Paris Peace Conference*, p. 423.

‘International institutions possess admirable negative qualities. They are formidable checks to all action, and the reason why they are so is that, when any action is proposed, objections of one sort or another generally occur to some member of the international body. Any action often involves a presumed advantage accorded to some rival nation, and it is a principle of internationalism, which is scornfully rejected in theory and but too often recognized as a guide for practical action, that it is better to do nothing, even though evil may ensue, than to allow good to be done at the expense of furthering the interests or of exalting the reputation of an international rival.’

In the case of Palestine, the above ‘formidable checks’ would have been even greater owing to the divergent religious influences which might have equally come into play. Moreover, it was feared that ‘Russian orthodox and French and Italian catholic interests would be strong enough to prevent any international recognition of the special interest taken by the Jewish community all the world over in Palestine.’¹

These were the main reasons which rendered necessary a revision of the Franco-British agreement of 1916. An explicit revision, however, never took place; it was only implicitly carried out through different measures subsequently adopted by the Allies with regard to the territories in question.

OCCUPATION OF MESOPOTAMIA, PALESTINE AND SYRIA : THE PERIOD OF MILITARY ADMINISTRATION

This was, in its broadest outline, the stage reached by international agreements and understandings, with regard to the territories to be detached from Turkey, when the military operations leading to the occupation of these territories were being carried out. The Ottoman

¹ Ph. Graves, *Palestine, the Land of Three Faiths*, pp. 43-44.

Empire lost through these operations its non-Turkish provinces in Asia one after the other. The Arab revolt which was the price paid to the Allies for the recognition of Arab independence deprived the Turkish Empire of Arabia ; southern Mesopotamia, with Bagdad, and southern Palestine, with Jerusalem, were conquered by the troops of the M.E.F. (Mesopotamian Expeditionary Force) and the E.E.F. (Egyptian Expeditionary Force) respectively in the course of 1917 ; and the rest—northern Mesopotamia, northern Palestine and Syria—was occupied as a result of the battles which led to the Armistice of Moudros (October 30, 1918) as well as in virtue of the terms of the Armistice itself.

Military administrations were set up in the conquered provinces. The Commanders-in-Chief of the above Expeditionary Forces were invested with the supreme authority in their respective zones. The territories occupied by the Egyptian Expeditionary Force were divided into three administrative zones called O.E.T.A. (Occupied Enemy Territory Administration) South, North and East, all of which continued to be under the supreme authority of the Commander-in-Chief of the Egyptian Expeditionary Force. But the immediate local administrations were entrusted, in the northern zone to a French military administrator called the chief political adviser, in the eastern zone to an Arab, and in the southern to a British administrator. The determination and division of authority was dealt with in a special agreement between France and Great Britain, signed on September 30, 1918, which placed the French local authority in coastal Syria under the supreme control of the British Commander-in-Chief. This agreement was of a purely military, and as such, provisional, character, its sole object being to preserve the necessary unity of command in time of war and during the period of military administration.

In January 1919 Cilicia was occupied by the Allies and constituted into a special zone called O.E.T.A. North, the former O.E.T.A. North becoming O.E.T.A. West. The functions of the French chief political adviser were extended to the newly occupied territory, but he continued to be under the control of the British Commander-in-Chief.

This arrangement was in force till September 15, 1919, when a new agreement was signed by Great Britain and France, abolishing the unity of command and stipulating that French troops be substituted for the British both in Syria and Cilicia, as from November 1, 1919. Although this agreement, like the previous one, was essentially of a military nature, yet it had far-reaching political consequences. The northern and western zones were placed under the authority of a French Commander-in-Chief who was no longer to be subordinate to the British; complete separation between the French and British zones was thus effected. This arrangement was regarded as a provisional one and without prejudice to the subsequent measures definitively to be taken in respect of the international status and the frontiers of the territories. But the influence of the Sykes-Picot Agreement is perceptible in its provisions as a whole. According to the agreement of September 15, 1919, the French troops were to replace the British in the territory corresponding to the blue zone of the Sykes-Picot Agreement; the zone A with 'the four towns,' although evacuated by the British troops, was not necessarily to be occupied by the French.¹ Indeed, the Arabs had already taken possession in the meantime of this territory, which was to form part of the contemplated Arab State or Confederation. However, part of zone A—the district of Mosul—was to

¹ According to P. Pic, however, both the blue and A zones of the Sykes-Picot Agreement were to be occupied by the French troops (*Le*

Régime du Mandat d'après le Traité de Versailles, in *R.G.*, tome xxx. (1923), p. 351).

remain under British occupation without prejudice to the future. (How far this has been the case will be seen later.)

The provisional, and in some respects vague, character of the agreement was responsible for the creation of a state of uncertainty and friction in the relations between French and Arabs in Syria. This state of affairs was further aggravated by the fact that it was practically impossible to ascertain the real wishes of the population concerned with regard to the future *régime* of the territories. The American Commission of Inquiry which proceeded to the ex-Turkish provinces earlier in the year in order to ascertain what those wishes were, could not reach any definite and practical conclusions owing mainly to the heterogeneous character of the populations and the generally backward stage of their development, especially in political matters. The masses were, indeed, and still are, under the immediate influence of largely irresponsible notables or tribal chieftains.

In spite of the fact that a neutral zone had been established between the French and Arab spheres in order to avoid hostilities, the situation grew more delicate after the proclamation of the Kingdom of Syria by the Arab Congress, held in Damascus in March 1920, and the election to the throne of Syria of the Emir Feizal, son of Hussein, then King of the Hedjaz. French and Arabs reciprocally accused each other of exceeding their powers under the provisional situation and taking advantage of it, until it became obviously impossible for such a state of affairs to continue any longer. It came to an end in July 1920 after the French ultimatum to Feizal, his overthrow and the ultimate occupation of eastern Syria with 'the four towns' by French troops. As a direct and immediate consequence of this occupation, the southern portion of the ex-kingdom of Syria, lying to the east of the Jordan, came under the direct control of the

British authorities in Palestine. On the other hand, the throne of Mesopotamia, which had been previously offered to Emir Abdullah, another son of Hussein, went to the dispossessed King Feizal, the former being subsequently compensated by the territory which has become known as Transjordan.

It has been said that the original responsibility for this state of affairs lay with the British Government, because of the parallel negotiations it conducted in 1915 and 1916 with France, on the one hand, and with the Arabs, on the other. This assertion may be allowed to pass, but not in the sense that the actual obligations assumed by the British Government towards French and Arabs were mutually inconsistent. It ought, however, to have been foreseen that the negotiations themselves, and the uncertainty as to their results, were likely to be the cause of divergent claims. On the other hand, it has to be pointed out that the French Government was not unaware, at the time, of the British negotiations with the Sherif of Mecca, as appears from the documents submitted to it by the British Government when the agreement of September 15, 1919, was signed.¹

APPLICATION OF THE MANDATES SYSTEM TO MESOPOTAMIA, PALESTINE AND SYRIA

Such was broadly the general situation which arose during, and partly owing to, the period of military administration in the occupied Turkish provinces. The view has been advanced that, in these circumstances, the application of the mandates system was the only practical means of harmonizing the various rights and interests involved. That is to say that, as far as Mesopotamia, Palestine and Syria are concerned, the mandates system under which these territories were

¹ *Le Temps*, Sept. 17, 1919.

subsequently placed is mainly a compromise between the secret inter-allied agreements and the obligations assumed towards the inhabitants concerned. This contention may be considered as well founded in so far as it implies that one of the aims of the mandates system—if it is not to degenerate into annexation or premature independence—is to establish a harmony between the rights of the inhabitants and the interests of the mandatory Powers. But it cannot be said that the underlying principles of the mandates system are merely the result of political combinations between the Powers. Ultimately the system owes its origin to the same causes as have stimulated the development of international law generally in the post-war period, and contributed towards the establishment of new foundations for the comity of nations.

The application of the mandates system to 'certain communities formerly belonging to the Turkish Empire' was first provided for in the Treaty of Versailles (Article XXII, paragraph 4, of the Covenant). The legal effect of this provision was to place the signatories to the treaty under obligation eventually to apply, or at least not to oppose the application of, the mandates system to the territories in question. But no permanent or definite measures could be taken in respect of these territories unless a treaty had previously been concluded between the interested Powers and Turkey; the renunciation by the latter of all rights and titles over the territories had indeed to be secured before any definite *régime* could legally be established there. In anticipation of such a treaty only preliminary measures were taken by the Powers, and mainly the assignment of the eventual mandates. This involved a decision by the Supreme Council of the Principal Allied Powers as to the territories to be placed under mandate as well as to the Powers which should be entrusted with the administra-

tion of these territories. Such a decision was mainly necessary owing to the vagueness of the provision of Article XXII concerning the ex-Turkish provinces. Paragraph 4 of this Article does not state explicitly which of the territories to be detached from Turkey should be placed under the mandatory *régime*; it speaks only of 'certain communities,' as we have seen. These communities had therefore to be determined in subsequent negotiations between the interested Powers.

It seems that the original intention of the authors of Article XXII was to apply the mandatory *régime* to all territories detached from Turkey which at that time were considered as 'not yet able to stand alone,' and in respect of which there existed no previous undertaking inconsistent with the introduction of the above *régime*. To the latter category belonged the Hedjaz, whose independence under the sovereignty of an Arab King had been recognized in the meantime. Complete independence is, indeed, the negation of the mandatory *régime*, and the Hedjaz had thus to be excepted from the sphere of its application.

This was also, though for quite different reasons, what happened with Armenia, another territory which was originally to be detached from Turkey. Armenia, it was generally admitted, was most in need of some form of international protection, surrounded as it then was by unfriendly neighbours against whom it could not adequately defend itself, should necessity arise. The failure to apply the mandates system to Armenia is due to the fact that no Power was willing to accept a mandate over this territory.¹ The United States Government

¹ With regard to the negotiations concerning the application of the mandates system to Armenia, see André Mandelstam, *La Société des Nations et les Puissances devant le Problème arménien*, in *R.G.*, tome xxix. (1922), pp. 361-366; see also

H. Morgenthau (former Ambassador to Turkey), *The Attitude of the United States towards Europe*, in *The Annals of the American Academy of Political and Social Science*, vol. xevi. (July 1921), pp. 68-69.

was approached on the matter by the Principal Allied Powers, and President Wilson—who was personally largely responsible for the elaboration of the mandates system—was favourably inclined to the idea, but when he asked the Congress for authority, this was refused. The special reason for this refusal—the general reasons undoubtedly being the same as prevented the United States from joining the League of Nations—may be gathered from the following quotation ¹:

‘It was never, to my knowledge, proposed, except by the inhabitants of the region in question,² that the United States should accept a mandate for Syria or the Asiatic coast of the Aegean Sea. Those regions were rich in natural resources and their economic future under a stable government was bright. Expenditures in their behalf and the direction of their public affairs would bring ample returns to the mandatory nations. On the other hand, there was a sustained propaganda—for it amounted to that—in favour of the United States assuming mandates over Armenia and the municipal district of Constantinople, both of which, if limited by the boundaries which it was then purposed to draw, would be a constant financial burden to the Power accepting the mandate, and, in the case of Armenia, would require that Power to furnish a military force, estimated at not less than 50,000 men, to prevent the aggression of warlike neighbours and to preserve domestic order and peace.’

After the exclusion of the Hedjaz on the one hand, and Armenia on the other, there remained, as far as Turkey was concerned, the detached territories of Mesopotamia, Syria and Palestine where the mandatory *régime* was to be instituted in pursuance of the provisions of Article XXII of the Covenant. The assignment of the mandates over these territories was made by the Supreme Council at its San Remo meeting (April 1920).

¹ R. Lansing, *The Peace Negotiations: a Personal Narrative*, pp. 141-142.

² This seems to be a reference to the conclusions of the American Commission of Inquiry of 1919.

The San Remo Conference.—The mandates for Mesopotamia and Palestine were assigned by the Supreme Council to Great Britain, the mandate for Syria (including the Lebanon) to France. These allocations were, naturally, subject to the subsequent conclusion of a peace treaty with Turkey.

It has been maintained that the decision taken by the Supreme Council at San Remo was merely the reproduction, under the cover of mandates, of the Sykes-Picot Agreement, which contemplated the division of the above territories between Great Britain and France. The influence of the Sykes-Picot Agreement on the decisions of the San Remo Conference cannot indeed be denied, but, as we shall see, a substantial change was contemplated in the new *régime*, as far as the inhabitants of the above territories are concerned. On the other hand, it can hardly be said, even from the mere point of view of territorial arrangement, that the San Remo Conference did no more than ratify the provisions of the Sykes-Picot Agreement.

Firstly, the vilayet of Mosul was, according to the latter, to be part of the zone A, under French influence. The San Remo Conference considered it to form an integral part of Mesopotamia and consequently placed it under British mandate, subject to the final delimitation of frontiers between Mesopotamia and Turkey which was to be provided for in the peace treaty. France adhered to this modification in consideration of a 25 per cent. share in the Mesopotamian oil, but the general desire to preserve the territorial integrity of Mesopotamia, to which the vilayet of Mosul more naturally belonged than to Syria, was doubtless a conclusive factor in producing this change.

The second modification introduced by the decisions of the San Remo Conference was the substitution in Palestine of a mandatory *régime* for the international

administration as contemplated by the Sykes-Picot Agreement. This, as we have seen, seems to be mainly due to the policy of the Jewish national home, to which the British Government in the meantime had pledged itself. Great Britain having been the first Power to adopt this policy, was naturally the most suitable one for carrying it into effect, and the British accredited representative to the Permanent Mandates Commission (Mr. Ormsby-Gore), when referring to this question, said that 'it was, after all, the Balfour Declaration which was the reason why the British Government was now administering Palestine.'¹

THE TREATY OF SÈVRES AND THE SUBSEQUENT PEACE NEGOTIATIONS

The Supreme Council's decisions of April 1920 were taken in anticipation of the peace treaty with Turkey, which at that time was under negotiation, its conclusion having been subsequently effected at Sèvres on August 10, 1920. In this connection it may be mentioned that a similar procedure had been followed in the previous year in the application of the mandates system to the ex-German colonies in Africa and the Pacific. The assignment of the B and C mandates was made by the Supreme Council at its session of May 7, 1919, *i.e.* equally before the signature of a peace treaty, in this case the Treaty of Versailles. Both as regards the ex-German colonies (under B and C mandates) and the ex-Turkish provinces (under A mandates), the respective peace treaties do not so much as mention the particular mandatory Powers. Germany renounced her oversea possessions in favour of the Principal Allied and Associated Powers (Article 119 of the Treaty of Versailles), and Turkey renounced her provinces in favour

¹ *P.M.C.*, Minutes of 7th Session, p. 111.

of the Principal Allied Powers (Article 132 of the Treaty of Sèvres), the United States—Associated Power—not having been at war with Turkey. This collectivity of Powers in whose favour the territorial renunciations, both by Germany and Turkey, were made, was maintained for the purpose of carrying into effect the transitory measures contemplated by the peace treaties. This explains the intervention of the above Powers through their representative organ, the Supreme Council, in the question of mandates. The functions of the Principal Allied Powers in this matter are, indeed, expressly dealt with in the provisions of the Treaty of Sèvres concerning the ex-Turkish territories to be placed under the mandates system. These provisions run as follows :

‘ *Article 94.*—The High Contracting Parties agree that Syria and Mesopotamia shall, in accordance with the fourth paragraph of Article 22, part I (Covenant of the League of Nations), be provisionally recognised as independent States subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone.

‘ A Commission shall be constituted within fifteen days from the coming into force of the present treaty to trace on the spot the frontier line described in Article 27, II (2) and (3). This Commission will be composed of three members nominated by France, Great Britain and Italy respectively, and one member nominated by Turkey ; it will be assisted by a representative of Syria for the Syrian frontier and by a representative of Mesopotamia for the Mesopotamian frontier.

‘ The determination of the other frontiers of the said States, and the selection of the Mandatories, will be made by the Principal Allied Powers.

‘ *Article 95.*—The High Contracting Parties agree to entrust by application of these provisions of Article 22 the administration of Palestine, within such boundaries

as may be determined by the Principal Allied Powers, to a Mandatory to be selected by the said Powers. The Mandatory will be responsible for putting into effect the declaration originally made on the 2nd November, 1917, by the British Government and adopted by the other Allied Powers in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing shall be done that may prejudice the civil and religious rights of existing non-Jewish communities in Palestine or the rights and political status enjoyed by Jews in any other country.

‘The Mandatory undertakes to appoint as soon as possible a special Commission to study and regulate all questions and claims relating to the different religious communities. In the composition of this Commission the religious interests concerned will be taken into account. The Chairman of the Commission will be appointed by the Council of the League of Nations.

‘*Article 96.*—The terms of the mandates in respect of the above territories will be formulated by the Principal Allied Powers and submitted to the Council of the League of Nations for approval.

‘*Article 97.*—Turkey hereby undertakes, in accordance with the provisions of Article 132, to accept any decisions which may be taken in relation to the questions dealt with in this Section.’

The Treaty of Sèvres, however, was not ratified owing to the Turkish nationalist movement, which had gradually become strong enough to prevent its execution. The free and independent State of Armenia established by the treaty (Article 88) was occupied by the Turkish troops who, on the other side, threatened Cilicia under French occupation. After prolonged negotiations a separate agreement was signed between France and Turkey in Angora on October 20, 1921, pending the conclusion of a collective peace treaty. According to this agreement the French troops withdrew from Cilicia,

and France renounced all rights in the zone of economic influence which she held in virtue of the tripartite agreement between Great Britain, Italy and herself (August 10, 1920). The zone of economic influence attributed to Italy was destined subsequently to suffer the same fate.

It was still thought, however, especially in British spheres, that the Treaty of Sèvres would survive these modifications and continue to be the regulative instrument as regards the other terms of peace with Turkey. But the military victories of the Turks over the Greek forces in western Asia Minor in 1922 made it clear that the Treaty of Sèvres would have to be revised in accordance with the new conditions.

This necessarily resulted in the postponement of the ratification by the Council of the League of Nations of the mandates as allocated at San Remo. True, it was argued by the British representative that 'whatever might happen to the Treaty of Sèvres, those parts of the treaty dealing with mandates would remain entirely unaffected.'¹ But legally a treaty is indivisible; it exists or it fails to exist. So long as a treaty is not duly ratified, *i.e.* so long as it creates no rights or obligations, it is impossible to say with certainty what the conditions are going to be when it comes to be signed, or what the repercussions of those conditions will be even on points not at present in dispute. In a case of this kind a tacit acquiescence cannot be invoked, because it is partial and essentially conditional, the conditions themselves not being stated or otherwise known. This was mainly the view put forward by the Italian Government and adopted by the second Assembly of the League of Nations in accordance with the recommendation of the mandates sub-committee, expressed in the following terms :

'With regard to the A mandates, the sub-committee

¹ Ch. H. Levermore, *Third Year-book of the L. of N.*, p. 137. For a full report of Lord Balfour's speech see *O.J.*, June 1922, pp. 546-548.

feels that it would be in any case premature to press for immediate action by the Council. It takes note of the fact that the Treaty of Sèvres has not yet been ratified by the Powers. As to these mandates, the sub-committee would only express its hope that, so long as the transitory conditions continue, the administration of the territories in question will still be carried out in the spirit of Article XXII of the Covenant.' ¹

Moreover, there was the question of the Mesopotamian northern frontier, which remained unsettled and which, it was maintained, might directly affect the mandate for this territory, because Great Britain's willingness to accept the mandate would be largely influenced by the decision regarding the province of Mosul.²

The provisions of the Treaty of Sèvres relating to mandates were, however, carried out by the Principal Allied Powers in occupation of the territories concerned, in spite of the non-validity of the treaty. These Powers tacitly agreed to regard the above provisions as binding in their relations *inter se*, so that when subsequently a new treaty was substituted for the Treaty of Sèvres, Turkey was simply called upon to recognize a *fait accompli*. This was, indeed, done in the Treaty of Lausanne (July 24, 1923) in the following terms :

' Turkey hereby renounces all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present treaty . . . the future of these territories . . . being settled or to be settled by the parties concerned ' (Article 16).

THE NEGOTIATIONS WITH THE UNITED STATES

The non-ratification of the Treaty of Sèvres, however, was not the only cause of the delay which occurred in

¹ R.A. (1921), C. II., p. 587.

² What has subsequently happened

in connection with this question has proved the soundness of this view.

the ratification of the A mandates by the Council of the League of Nations. Owing to the serious effect the delay had on the internal situation of the territories concerned, the Council would probably have ratified the A mandates before the conclusion of a peace treaty with Turkey—as in fact it eventually did—but for the protracted negotiations with the United States concerning its interests in the mandated territories.

These negotiations began after the San Remo Conference at which, besides the allotment of the A mandates, an oil agreement was signed between Great Britain and France (April 24, 1920). The recognition by Great Britain of a 25 per cent. interest in the Mesopotamian oil to France was regarded by the United States Government as inconsistent with the principle of equality of treatment as embodied in the mandates system,¹ and a series of long notes were exchanged between the Governments concerned. The British Government maintained that the above interest (representing the former German share in the Turkish Petroleum Company) was allotted to France 'in return for facilities by which Mesopotamian oil will be able to reach the Mediterranean'² (construction of pipe-lines through Syria), but the main consideration was no doubt the renunciation by France of her 'long-standing interests in the Mosul district,' of which a former note speaks. This has to be read in connection with the now abandoned provision of the Sykes-Picot Agreement which placed the above district in the French zone of influence.

Another point of primary importance was also discussed in the notes exchanged between the United States and the British Government. This was the drafting of the mandate, a question which in its origin goes as far back as the Paris Peace Conference itself.

¹ *International Conciliation* (No. 166), Note of the U.S. to Great Britain, May 12, 1920.

² *Ibid.*, p. 329, British Note of Feb. 28, 1921.

At the session of the Supreme Council held in May 1919 an international Commission, under the chairmanship of Lord Milner, was set up in order to prepare draft mandates of the different categories for adoption by the League of Nations. But, while the Commission succeeded in drafting the type-mandates for the B and C categories, divergencies of views arose among its members with regard to the A mandates, the drafting of which was consequently abandoned by the Commission. In order to avoid undue controversy as to the competent authority for defining the terms of the A mandates, a special provision to this effect, as we have seen, was inserted in the Treaty of Sèvres (Article 96). In their negotiations with the United States the British Government took the view that 'the terms of the mandates can only properly be discussed at the Council of the League of Nations by the signatories of the Covenant.'¹ The United States Government, however, was of the opinion that

'such powers as the Allied and Associated nations may enjoy or wield in the determination of the governmental status of the mandated areas accrued to them as a direct result of the war against the Central Powers. The United States as a participant in that conflict and as a contributor to its successful issue cannot consider any of the Associated Powers, the smallest not less than itself, debarred from the discussion of any of its consequences, or from participation in the rights and privileges secured under the mandates provided for in the treaties of peace.'²

When, therefore, on the following December 17, the draft A mandates, as first prepared by the respective Mandatories, were forwarded to the Secretariat of the League in order to be submitted to the Council, the

¹ *Ibid.*, p. 315, Note of Aug. 9, 1920.

² *Ibid.*, p. 321, Note of Nov. 20, 1920.

United States Government in a note to the latter, dated February 23, 1921, protested against a definition of the mandates being made without previous consultation with itself.

‘The attention of the Council was particularly invited to a request . . . that the draft mandates to be submitted to the League of Nations should be communicated to the Government of the United States for its consideration before they were submitted to the Council of the League, in order that the Council might be furnished with the opinion of the Government of the United States on the mandates and an indication of the basis on which the Government of the United States would be prepared to approve them.’¹

On March 1 the Council informed the United States Government that it had postponed the consideration of the mandates, and that ‘no decision would therefore be reached with regard to them until the United States Government had had an opportunity to express its views.’²

RATIFICATION OF THE A MANDATES BY THE COUNCIL OF THE LEAGUE OF NATIONS

Palestine and Syria.—It was not before the session of the Council of the League of Nations held in May 1922 that the British representative was in a position to announce that the negotiations between Great Britain and the United States with regard to the Palestine mandate had come to a successful conclusion. It seems that originally it was the opinion of the British representative that the A mandates could be individually approved by the Council of the League, the more so since the mandate for Mesopotamia had in the meantime developed on quite different lines. But the French

¹ *R. A.* (1921), P., p. 115.

² *Ibid.*

representative asked for the postponement of the discussion of the Palestine mandate until the mandate for Syria was ready to be equally and simultaneously discussed by the Council. The Italian representative also asked for postponement because at that time an exchange of views was taking place between the British and Italian Governments on certain points relating to the Palestine mandate. Finally the Council of the League agreed that the matter should be postponed until its next session.¹

When the question of the above mandates came before the Council at the following session, in July, the Italian representative made a similar request concerning the mandate for Syria, namely that a new delay should be granted for the conclusion of the conversations which at that time were still in progress between the French and the Italian Governments. This amounted to an *impasse*, since the opposition of the Italian representative to the discussion by the Council of the mandate for Syria necessarily resulted in the French representative having to object to the immediate ratification of the Palestine mandate. 'It would create an intolerable situation for France,' said the French representative, 'if the Palestine mandate were to be awarded to Great Britain and discussion of the Syrian mandate postponed. This would cause administrative difficulties of the gravest nature for the French authorities in Syria.'² Considerations of an administrative character were mainly the reason why both the French and the British Governments urged the early ratification by the Council of the mandates respectively allotted to them. This was pointed out at the previous session of the Council by the British representative, who added that 'no one need . . . have the least fear, or entertain the least hope, that the broad lines of the policy regarding mandates were going to suffer

¹ *O.J.*, June 1922, p. 549.

² *Ibid.*, Aug. 1922 (Part II.), p. 798.

any alteration.’¹ This statement, although mainly intended for the inhabitants of the territories concerned, was made in terms general enough to imply a direct reference to the possible attitude of certain Powers towards the question of mandates.

The Italian attitude was professedly due merely to a desire to safeguard the rights of Italy and its nationals in the mandated territories, but in fact it was based on reasons of far greater importance. We have already seen that when the question of the A mandates first came before the League, the view was taken by the Italian Government that ‘the future of these mandates should be bound up with the fate of the Treaty of Sèvres.’ The logical and legal deduction from this view would be that the whole question of the A mandates was to be reopened in the case of a revision of the treaty. But Italy could hardly have taken exception to the application of the mandates system to certain ex-Turkish provinces, being signatory to the Covenant in which such application is provided for. Moreover, Italy was represented at the San Remo Conference when the A mandates were allocated. The real aim of Italy apparently was to get some compensation in the mandated territories for the loss of the zone of economic influence in Asia Minor attributed to her in the tripartite agreement based on the Treaty of Sèvres and signed on the same day. ‘The Italian attitude,’ as was pointed out, ‘meant that Italy was trying to secure again special economic, educational and missionary privileges in Syria and Mesopotamia which she had renounced in the sphere of influence agreement of 1920.’²

Italy’s suggestion, however, to postpone further the definite approval by the Council of the League of the above mandates met with the strongest objection from the prospective mandatory Powers. The Council

¹ *O.J.*, June 1922, p. 546.

² Ch. H. Levermore, *op. cit.*, p. 195.

decided merely to adjourn the question long enough to give the Italian representative 'an opportunity of receiving instructions from his Government,'¹ and in the meantime the highly controversial Article 14 of the Palestine mandate regarding the Holy Places was discussed and revised. Towards the end of the session, on July 22, 1922, agreement was reached by the members of the Council on the following lines :

'In view of the declarations which have just been made, and of the agreement reached by all the Members of the Council, the articles of the mandate for Palestine and Syria are approved. The mandates will enter into force automatically and at the same time as soon as the Governments of France and Italy have notified the President of the Council of the League of Nations that they have reached an agreement on certain particular points in regard to the latter of these mandates.'²

In conformity with this decision the mandates for Palestine and Syria came simultaneously into force on September 29, 1922.

Mesopotamia.—The mandate for Mesopotamia, unlike the other two A mandates, was not laid before the Council at the above session, owing mainly to the fact that at the same time negotiations were in progress between the British and the Mesopotamian Governments with a view to the recognition of Iraq's independence subject to certain conditions. This was foreshadowed in the statement made by the British representative on the Council to the effect that

'His Majesty's Government think it desirable to inform the League that the political developments in Iraq have led them to the conclusion that their obligations *vis-à-vis* the League can be most effectively discharged if the principles on which they rest are embodied in a treaty to be concluded between His Majesty's Government and the

¹ O.J., Aug. 1922 (Part II.), p. 802.

² *Ibid.*, p. 825.

King of Iraq. . . . It will be understood that the proposed treaty will serve merely to regulate the relations between His Majesty's Government, as mandatory Power, and the Arab Government of Iraq. It is not intended as a substitute for the mandate, which will remain the operative document defining the obligations undertaken by His Majesty's Government on behalf of the League of Nations.' ¹

The negotiations concerning the above treaty came to an end on October 10, 1922, when the Treaty of Bagdad ² was signed by the British High Commissioner for Iraq and the Prime Minister of the territorial Government. According to Article 18, the treaty was to remain in force for twenty years, but this period has been subsequently reduced by the protocol of April 30, 1923, providing that the Treaty of Bagdad 'shall terminate upon Iraq becoming a Member of the League of Nations and in any case not later than four years from the ratification of peace with Turkey.' ³ Four subsidiary agreements provided for in the treaty (Articles 2, 7, 9, 10 and 15) were signed on March 25, 1924. ⁴

The provisions of the above document were summarized by the British Government in a draft instrument and submitted with annexes to the Council of the League of Nations. On September 27, 1924, the latter 'unanimously approved the terms of a communication from the British Government as giving effect to Article XXII of the Covenant with regard to the British mandate for Iraq.' ⁵ These terms are summarized as follows :

'The British Government assumes towards all Members of the League responsibility for the fulfilment by Iraq of the provisions of the Treaty of Alliance between Great

¹ *M.S.*, Dec. 1921, pp. 169-170.

² *Cmd.* 2370 (1925).

³ *Ibid.*, p. 8; see also *O.J.*, June 1923 (Annexes), p. 728.

⁴ Two of them, the financial and military agreements, are now to be

superseded by new ones, in pursuance of the treaty of December 14, 1927 (see *infra*, p. 38), Arts. 12 and 13 respectively.

⁵ *M.S.*, Sept. 1924, p. 191.

Britain and Iraq. The British Government will submit an annual report to the Council on the steps taken by Iraq to carry out the terms of the Treaty of Alliance. The British Government will not agree to any modification of the terms of this treaty without the consent of the Council. It undertakes to submit to the Permanent Court of International Justice any dispute between itself and any other Member of the League as to the application or interpretation of the Treaty of Alliance, if this difference cannot be settled by negotiation. The various obligations assumed by the British Government will come to an end if and when Iraq is admitted to the League.' ¹

The ratification of the Iraq mandate by the Council proved, however, not to be final, since the subsequent dispute concerning the frontier between Iraq and Turkey seemed to have reopened the whole question of the mandate itself. The dispute, which arose out of Article 3, § 2 of the Treaty of Lausanne, came before the Council of the League, and in virtue of the interpretation given to the above provision by the Permanent Court of International Justice in its advisory opinion of November 21, 1925,² a decision was reached by the Council attributing the disputed vilayet of Mosul to Iraq on condition that the British Government should undertake to act as Mandatory for Iraq for a period not exceeding twenty-five years. Thus the protocol of April 30, 1923, was replaced by a new treaty signed between Great Britain and Iraq on January 13, 1926,³ and the consent of the Turkish Government to the arbitral award of the League was secured in the treaty of June 5, 1926, signed in Angora between Great Britain, Iraq and Turkey.

These were the final stages in the history of the definite ratification of the mandate for Iraq. With this ratification all the A mandates, namely those for

¹ *Ibid.*, pp. 191-192.

² *Cmd.* 2662 (1926).

³ *P.C.*, Series B, No. 12.

Palestine, Syria and Iraq, have entered the period of practical realization, each on its own peculiar lines.

GENERAL OBSERVATIONS ON THE A MANDATES

Article XXII of the Covenant seems to have contemplated in paragraphs 4, 5 and 6 some sort of general classification of the various mandated territories into three large categories, which subsequently became known as the A, B and C categories. But owing to the intentional vagueness of the Article, it is hardly possible to reach any definite conclusion as to the considerations underlying this classification. Is the classification mainly a geographical one—in other words, is the expression ‘A mandated territory,’ for instance, to mean merely that the territory in question formerly belonged to the Turkish Empire, or is it based on political and legal considerations, and in this case, does the above expression refer to a territory which is necessarily to be placed under the special provisions of paragraph 4 of Article XXII? In comparing this Article with the terms of the particular A mandates in which its general principles are applied, the following conclusion suggests itself: If the original intention of the authors of Article XXII was that each category of mandates should be based on some definite and distinct principles of its own, then it is hardly possible to say that what is known as the A mandates form a special category. In fact, the texts of the A mandates—unlike the C and, with some exceptions, the B mandates—differ considerably from one another, and all they actually have in common are the general principles of the mandates system and the fact that they apply to ex-Turkish territories with a peculiar position of their own in the Near and Middle East.

Already the Milner Commission, whose task it was in

1919 to prepare the draft type-mandates for the various categories,¹ had come to the conclusion that it was impracticable to apply the same principle and general lines of policy in the various A mandates. While the Commission was successful in drawing up the draft B and C mandates, it had to leave the drafting of the A mandates to the prospective Mandatories themselves. The latter, however, could not rest content with the generalizations of Article XXII of the Covenant and base their drafts on the somewhat arbitrary classification which it has vaguely contemplated. Large powers of interpretation in regard to the general principles underlying Article XXII seem to have been allowed to those who would have to draft the texts of the particular mandates; it is, indeed, provided in paragraph 3 of the Article that 'The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions, and other similar circumstances.' As interpreted in the particular mandates, the classification contemplated in Article XXII seems rather to have been taken as broadly indicating the consecutive stages which the various mandated territories would have to pass through on the way to their ultimate independence.² In particular the territories under A mandates were not considered as having all reached the same stage of evolution. First from this point of view comes Mesopotamia, next, Syria, and last, Palestine.

We have just seen that a series of agreements were signed between Mesopotamia and Great Britain regulating the mutual relations of the two countries. The very fact that Mesopotamia was recognized as possessing the

¹ Or, in the words of Lord Milner himself, 'to fix the conditions under which the various Mandatories should exercise their authority over the territories allotted to them' (*P.D.* (H. of L.), vol. 41 (1920), col. 628),

² Fauchille speaks indeed of the *transformation* of the B and C mandates into categories A and B respectively (*Traité de Droit International Public*, tome i. 2^{ème} partie, p. 883),

necessary capacity for signing an international agreement by Great Britain and the League of Nations shows that this mandated territory had an international status far in advance of the status enjoyed by the other mandated territories, even of the same category. Article 1 of the original treaty of 1922 laid down the fundamental principle on which the relations between the contracting parties were to be based; it provided that Great Britain was to render to Mesopotamia 'such advice and assistance as may be required during the period of the present treaty, without prejudice to her [Mesopotamia's] national sovereignty.' This Article fully and almost literally applied to Mesopotamia the provision of Article XXII, paragraph 4, which, speaking of the communities that have formerly belonged to the Turkish Empire, says that 'their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone.' In accordance with Article 1 of the treaty, Article 3 provided that 'His Majesty the King of Iraq agrees to frame an organic law for presentation to the constituent assembly of Iraq.' The framing of the organic law¹ by Iraq itself was, indeed, the first step towards Iraq's independence. In view of the progress made by Iraq a new treaty was concluded between its Government and Great Britain on December 14, 1927,² 'on terms of equality.' Article 1 of the treaty provides that 'His Britannic Majesty recognizes Iraq as an independent sovereign State,' and in virtue of Article 8, 'provided the present rate of progress in Iraq is maintained and all goes well in the interval, His Britannic Majesty will support the candidature of Iraq for admission to the League of Nations in 1932.' It may conse-

¹ Definitely adopted by the Constituent Assembly on July 10, 1924.

² *Cmd.*, 2998 (1927),

quently be said that Iraq had now reached the borderline between an independent State and a mandated territory.

Syria, on the other hand, is in quite a different position. Article 1 of the mandate provides that

'The Mandatory shall frame, within a period of three years from the coming into force of this mandate, an organic law for Syria and the Lebanon. This organic law shall be framed in agreement with the native authorities and shall take into account the rights, interests and wishes of all the population inhabiting the said territory. The Mandatory shall further enact measures to facilitate the progressive development of Syria and the Lebanon as independent States. Pending the coming into effect of the organic law, the Government of Syria and the Lebanon shall be conducted in accordance with the spirit of this mandate. The Mandatory shall, so far as circumstances permit, encourage local autonomy.'¹

The reason why Syria was not to be granted so large an autonomy as Mesopotamia was not because the inhabitants of the former territory were individually less developed than those of the latter—the contrary seems rather to be the case—but because collectively Syria was, and apparently still is, less 'able to stand alone,' owing to the heterogeneous character of its inhabitants, belonging as they do to different creeds and nationalities opposed and sometimes hostile to each other. The larger powers given to the Mandatory in Syria, as compared with those of the Mandatory in Iraq, may thus be justified on the ground that they offer the necessary guarantee for securing peace and public order within the territory. Syria of the mandate is, indeed, a mere geographical expression, containing as it does the Lebanon with a Christian majority and various nationalities, Syria proper with 'the four towns' inhabited

¹ *O.J.*, Aug. 1922 (Part II.), p. 1013.

mainly by Mohammedans of various shades, the district of Alexandretta with a strong Turkish element, the Druse territory, etc. This diversity of element made it necessary for the Mandatory to establish in the territory a Federation of States, politically independent of each other, as the only practical means of securing co-operation between the various parts of the territory. Centralization and decentralization have been alternately tried by the Mandatory, but only a very limited autonomy could up to the present be granted to the local population. The organic law referred to in Article 1 of the mandate is still largely a matter for the future, and it is hardly possible to say that the *rôle* of the Mandatory in Syria consists in nothing more than administrative advice and assistance as provided in paragraph 4 of Article XXII.

The third and last place, from the point of view of the degree of local autonomy granted to the territories under A mandate, is held by Palestine. According to the provisions of Article 1 of the mandate, 'the Mandatory shall have full powers of legislation and of administration, save as they may be limited by the terms of this mandate.' A similar provision has been inserted in all the mandates of the B category, and some authors, presumably on this account, classify the Palestine mandate in this category.¹ Indeed, those who consider that the degree of autonomy granted to a given mandated territory constitutes the criterion for classifying its mandate must admit that the Palestine mandate, although applying to a territory which formerly belonged to the Turkish Empire, is nearer the B than the A category.

PECULIAR CHARACTER OF THE PALESTINE MANDATE

The exceptional character of the Palestine mandate is due to, and constituted by, the following general provision of its preamble :

¹ Oppenheim, *International Law*, vol. i. p. 288, note,

‘Whereas the Principal Allied Powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on November 2nd, 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country; and

‘Whereas recognition has thereby been given to the historical connection¹ of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country.’

Various clauses of the mandate, as we shall see, give effect to this provision in placing the mandatory Power under definite obligations and making this Power ‘responsible for placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home’ (Article 2).

In the opinion of the Mandatory, it was impossible to reconcile the above provisions with the granting of unqualified autonomy to the present population of Palestine, since such an autonomy would imply the right to dispose of the country by legislative and administrative measures, even against the obligations assumed by the Mandatory. The present population of Palestine is, indeed, only a part of the much larger population whose connection with Palestine has been internationally recognized. The Jewish people as a whole may be considered, for this particular purpose, as forming virtually part of the population of Palestine. The mandates system has been applied to Palestine not

¹ The expression ‘historical connection’ was criticized as being too vague, and it was suggested that if it means anything from the legal point of view it can only mean

‘historical right.’ This last expression, it is said, was probably not used because of the disrepute into which it fell owing to the abuse made of it in the course of history (see *infra*, p. 63).

merely on account of the inability of its present population to stand alone, as is the case with the other mandated territories, but also, and perhaps chiefly, on account of the fact that the people whose connection with Palestine has been recognized is still outside its boundaries. The mandatory Power thus appears not only as a Mandatory, in the sense generally given to this term, but as a kind of a provisional administrator in the interest of an absent people. In this capacity the Mandatory has assumed an obligation not towards the actual but the virtual population of Palestine.¹

IS THE PALESTINE MANDATE INCONSISTENT WITH
ARTICLE XXII OF THE COVENANT ?

It has been alleged that the obligations undertaken by the Mandatory for Palestine with a view to carrying out the national home policy are inconsistent with those of a Mandatory in his capacity as such. In other words, it has been said that the mandate for Palestine, in its present form, is incompatible with Article XXII of the Covenant, because the mandates system as contemplated in that Article is instituted in the interests of the actual inhabitants of the mandated territories, while the Palestine mandate contemplates the interests of a people actually outside the territory. The criticism is

¹ The peculiar nature of the Palestine mandate has been summarized in the following terms: 'The Mandatory is to administer that country not simply on behalf of the population which is there, but with a view to help the people which desires to come there. . . . There is no parallel in history to a State undertaking a task of this kind, not on behalf of its own subjects, but as a trustee for the conscience of the civilised world. . . . It undertakes the continual and gradual realisation of an ideal. It must initiate a system of government and administration which, while securing justice and fair treatment for the existing popu-

lation of Palestine, will enable a new national life to be established there. It was clearly necessary in order to achieve this end that the Mandatory should be able to exercise the powers inherent in the government of a sovereign State and should not have its functions limited to the rendering of administrative advice and assistance' (N. Bentwich, *Mandated Territories: Palestine and Mesopotamia*, in *B.Y.* (1921-22), p. 51). Professor Berriedale Keith is also of the opinion that in Palestine 'the Mandatory has and must retain sovereign power' (*Mandates*, in *J.C.L.*, Feb. 1922, vol. iv. part i. p. 78).

thus concerned with the underlying principles of the mandates system as applied to Palestine. But the main object of this system is to guide towards independence and self-government those races, peoples or communities who for various reasons are not yet able to stand alone. This is also the very object of the national home policy, which aims at giving the Jewish people the necessary assistance to form in Palestine an independent and self-governing community. The underlying principles, not only of the mandates system but of the Covenant as a whole, are thus given effect to in the national home policy. There seems to be no valid reason for doubting that this policy in itself follows directly from the principles of nationality and self-determination upon which the Covenant of the League of Nations largely rests.¹

Thus the principle upon which the Palestine mandate—including the national home provision—is based appears to be the very same as that which underlies all the other mandates, namely that the well-being and the development of the peoples not yet able to stand alone form a sacred trust of civilization. The peculiarity of the national home policy seems to be the extension of this principle so as to include the Jewish people in the category of the above peoples. The reason why the Jewish people is as yet not able to stand alone matters but little from the point of view of the mandate, although it may be said that this incapacity is mainly due to its dispersion and not, as in most other cases, to a more or less low degree of development. The insertion of the provisions regarding the national home in the Palestine mandate merely widens the scope of the latter and does

¹ The contrary view is held by Professor Berriedale Keith, who says that 'the adoption of the principle of a Jewish national home runs directly counter to the doctrine of

the right of each people to self-determination' (*ibid.*). One fails, however, to see why the Jewish people should be deprived of this right.

not affect the fundamental principles of the system as a whole ; it simply gives a wider meaning to the term 'community' used in Article XXII with regard to certain ex-Turkish provinces, of which Palestine is one.

The question whether the Palestine mandate is inconsistent with Article XXII of the Covenant has been answered in the negative in the following terms :

'The real point, and the only point, appears to me to be whether it can be said that the scheme contained in Article 2 [of the Palestine mandate—inaugurating the national home policy] is inconsistent with Article XXII of the Covenant. I am clearly of opinion that there is no such inconsistency. Article XXII of the Covenant does show that the general object is to secure the well-being and development of mandated territories. Article 2 of the mandate, of course, deals with a special scheme of immigration and settlement, viz. : that of the Jewish people. But I see absolutely no inconsistency between the two. It may well be that a judicious scheme of immigration is the best possible method of developing the resources of Palestine and securing the well-being of that country.' ¹

So much for the question of principle. With regard to the text, it has been pointed out that the provisions of the Palestine mandate relating to the national home do no more than give effect to Article 95 of the Treaty of Sèvres, which contains the actual text of the British Declaration of November 2, 1917, endorsed by the Principal Allied Powers. According to the above-quoted statement,

'Palestine does not really fall within any of the three categories laid down in Article XXII, and the validity of this mandate depends upon Article 95 of the Treaty of Sèvres, which applies to the special case of Palestine the provisions of Article XXII.' ²

¹ Statement by Sir William Finlay on the Palestine mandate (*O.J.*, July-August 1921, p. 444).

² *Ibid.*, p. 443.

Whilst the first part of this statement may be questioned on various grounds, the second still holds good in spite of the fact that it was made in 1921, when it was thought that the Treaty of Sèvres would be ratified. Indeed, the provisions of this treaty as far as the various A mandates are concerned have been implicitly ratified, as we have seen, in Article 16 of the Treaty of Lausanne.

Two more points of alleged inconsistency between the Palestine mandate and Article XXII of the Covenant have been raised. The first is that, while paragraph 4 of Article XXII limits the *rôle* of the Mandatory in the ex-Turkish provinces to 'administrative advice and assistance,' the Palestine mandate gives him 'full powers of legislation and of administration' (Article 1). The other is that the wishes of the Palestine communities have not been 'a principal consideration in the selection of the Mandatory,' as provided for in Article XXII, paragraph 4.

1. The first point was referred to above in the general observations on the A mandates, and the main reasons were stated for the differences in the degree of autonomy granted to the inhabitants of the territories concerned. However, the allegation of inconsistency on this particular ground can only be maintained if it is proved :

- (a) That the above provision of paragraph 4 applies to Palestine.

[Certain authorities hold that it does not, on the ground that the international instrument on which the Palestine mandate is based is the Treaty of Sèvres and not Article XXII of the Covenant.]

- (b) That the heterogeneous population of Palestine has reached a stage of development which would enable it to be self-governing subject only to the

administrative advice and assistance of the Mandatory.¹

- (c) That 'administrative advice and assistance,' as interpreted in the other A mandates, does not mean in some particular instances of vital importance advice which must be taken.

[This is to a certain extent the case even in Mesopotamia, where the largest measure of autonomy has been granted.]

- (d) That there was no attempt made by the Mandatory to grant any autonomy to the local population, or that the latter did not reject any form of autonomy granted by the Mandatory as a first step towards ultimate self-government.

[We shall see that the repeated attempts of the Mandatory to introduce a larger measure of autonomy in Palestine have only failed through local opposition.]

2. With regard to the second point on which the allegation of inconsistency is based, it has been pointed out² that

- (a) The provision relating to the wishes of the local community is not applicable to Palestine.
 (b) It is only in the selection of the Mandatory that the wishes of the community must be a principal consideration.
 (c) The words are 'a principal consideration' and not 'the principal consideration.'

An attempt was made in 1919, as we have seen, to ascertain the wishes of the inhabitants concerned

¹ Dealing with the proposed application of the mandates system to certain territories to be detached from Turkey, General Smuts says: '... there will be found cases where, owing chiefly to the heterogeneous character of the population and their incapacity for administrative co-operation, autonomy in any real sense would be out of the question and the

administration would have to be undertaken to a very large extent by some external authority. This would be the case, at any rate for some time to come, in Palestine, where the administrative co-operation of the Jewish minority and Arab majority would not be forthcoming' (*op. cit.*, pp. 16-17).

² *O.J.*, July-August 1921, p. 444.

through an American Commission, but it failed owing to the fact that the masses of the local population are still insufficiently developed to have and to express political wishes of their own.¹ Moreover, in the particular case of Palestine there could be no question of acting exclusively upon the wishes of the local population, supposing they could be ascertained. Indeed, the national home policy brought into the orbit of Palestine a potential population whose wishes, as it seems, would have had equally to be taken into consideration, on the ground of its 'connection' with Palestine. As to the selection of the Mandatory, there can be no doubt that the wishes of the people whose right had been recognized to a national home in Palestine would have been in favour of the Power that was the first to recognize this right and consequently the most suitable to carry it into effect.

Both from the point of view of principle and text the following conclusion seems therefore to be fully justified :

'It is . . . impossible upon any principle of construction to say that there is any inconsistency between this scheme [the national home as embodied in the mandate] and either the letter or the spirit of Article XXII, merely because the scheme, which may benefit Palestine, may also benefit one particular people, viz. : the Jews. What is hoped is obviously that this scheme, while beneficial to the Jews, will also prove in the best interest of Palestine. There is no inconsistency between these objects.'²

GENERAL DIVISION.—The Palestine mandate was conceived and is to be read as one whole. It contains, however, as we have seen, two distinct sets of provisions, the one being concerned with the Jewish national home and the other with the mandate properly speaking. It

¹ According to Smuts, Palestine provides one of the cases where 'the consultation of the country on the question of its mandatory State is

. . . formally impossible' (*op. cit.*, p. 20).

² *O.J.*, July-August 1921, p. 444.

is by dealing with those provisions separately, without at the same time losing sight of their interdependent character, that the dual aspect of the Palestine mandate can be most clearly brought out.

Part I will be devoted to the Jewish national home, its fundamental principles and the resulting obligations assumed by the Mandatory.

Part II deals with the mandate properly speaking and the Mandatory's obligations towards the inhabitants of Palestine as a whole and the League of Nations.

PART I

THE JEWISH NATIONAL HOME

CHAPTER I

THE FUNDAMENTAL PRINCIPLES

THE fundamental principles on which the Jewish national home is based may be analysed under the following heads :

1. The principle of nationality and the Jewish people.
2. The historical connection of the Jewish people with Palestine.
3. The concept of a national home, as applied in Palestine.

1. THE PRINCIPLE OF NATIONALITY AND THE JEWISH PEOPLE

The principles of nationality and of self-determination, as they are commonly called, owe their origin to the growth of national self-consciousness, mainly during the second half of the nineteenth century. In spite of their gradually increasing influence since their inception, they were long kept outside the sphere of international law proper. It is only after the Great War that they seem to have actually become part of that law, inasmuch as they have served as a guiding instrument in the peace treaties of 1919-1923. Whatever else may be said about these treaties, there can hardly be any doubt that they have given to the above principles much wider application than any previous treaty. As a consequence, a general tendency to subject these principles to legal analysis and definition has gradually taken the place of vague idealistic conceptions in which very little notice

has sometimes been paid to realities and possibilities. The rôle of the international lawyer in this connection mainly consisted in purging the principles in question from such elements as could not be easily absorbed by positive law, and as a result a slight reaction has set in, which in certain cases seems to have overshot the mark. The main issue before the lawyers was whether all—and if not, which—human groups claiming to constitute a nation should be recognized as such by international law and given the right of self-determination.

According to the so-called objective theories, mainly of German origin, some outer signs, such as community of race, language or even religion, must be possessed by any nation in order to be recognized as such. Other theories, mainly of the French school—the subjective theories, as they are sometimes called—maintain that the main characteristic of a nation is the common desire of its members to live a distinct national life of their own, ‘*avoir fait de grandes choses dans le passé, vouloir en faire dans l’avenir*,’ as Renan put it before the question had ever been dealt with from a legal point of view. A theory which does not come under either of these two heads has recently been advanced¹; its eclectic nature may be seen from the enumeration of the conditions which, according to this theory, any human group is bound to fulfil in order to be admitted to nationhood. They are the following :

- (1) Desire for autonomy by the group concerned.
- (2) Distinct historical development.
- (3) Capacity to govern.
- (4) Fairly considerable population, economic wealth and territory.
- (5) A certain level of culture.

It seems, however, that the absence of such conditions

¹ B. Lavergne, *Le Principe des Nationalités et les Guerres*, pp. 17-27.

as capacity to govern and sufficient degree of culture does not necessarily deprive a given human group of its 'national' character. International law has, indeed, recognized as 'independent nations'—though only 'provisionally,' it is true—certain communities which are 'not yet able to stand alone.' The formulation of the above conditions appears to be based on a confusion between State and nation, which the principle of nationality itself, indeed, facilitates. On the other hand, such a condition as distinct historical development does not necessarily constitute one of the essentials of nationhood, although in fact it may often be its cause.

In this connection it is to be pointed out that the recognition of nationhood does not of necessity imply the recognition of an unqualified right to self-government, but it may have other practical consequences of the very first importance to the population concerned. It is clear that, in so far as the right of self-government is involved, the principle of nationality cannot be applied when one or more of the conditions enumerated above are not fulfilled. But in that case the principle may imply another right, namely, to special international protection, such as has been recently established by the law of nations and carried out under the principles of protection of minorities or of the mandates system, as the case may be. If the impossibility of granting self-government to a given community is due to such conditions as lack of geographic contiguity between the areas inhabited by its members or to insufficient numbers for the creation of an autonomous State, then the application of the principle of nationality to the above community would mean in certain cases the recognition of a right to the special privileges embodied in the system of protection of minorities. If, on the other hand, it is due, say, to the lack of capacity to govern or to insufficient development, then the application of the above

principle would be carried out through the special guarantees of the mandates system. Thus the two systems of recent creation, each in its own way, appear to be the necessary complements of the principle of nationality when full application of the latter, namely, the grant of unqualified independence, is considered either impracticable or premature. They clearly indicate that for the purposes of the above principle distinction is to be drawn between the necessary conditions for the creation of a State on the one hand and the recognition of a nation on the other. Such distinction, however, seems not to have been fully taken into account in the above-mentioned theory, which is summed up by its author in the following terms:

‘ In order that a population be a nation, the desire to live in common [*vouloir-vivre collectif*] is not sufficient, there should also exist within it the capacity to live in common [*pouvoir-vivre collectif*].’¹

But is it not the case that protection of minorities and the mandates system apply to human groups constituting ‘ nations ’ in being or in process of formation respectively, and possessing no such ‘ *pouvoir-vivre collectif* ’ ? The latter indeed, necessary as it is to the creation of a State by a given nation, seems not to be indispensable for the purpose of the recognition of the nation itself.

Speaking of the ‘ recognition of nations ’ which has recently been accepted in international law, P. Fauchille traces the recognition as a nation of the Jewish people by the British Government back to 1903 when it offered territory in Uganda for Jewish settlement. It is, however, the World War that has brought about the international recognition of the national character of the Jewish people. Enumerating the various declarations made by France (April and June 1917 and February

¹ B. Lavergne, *op. cit.*, p. 29.

1918), Great Britain (November 1917), Italy (March 1918), the United States (September 1918), Greece, Japan, etc., Fauchille concludes that

‘all these converging declarations constitute beyond question the recognition as a nation of the Jewish people. They were solemnly confirmed by the Principal Allied Powers at the San Remo Conference.’¹

There can hardly be any question now whether Jews constitute a distinct national entity in the eyes of international law. This seems to have been laid down, on the one hand, by the various treaties containing what is known as minority clauses, and on the other, by the mandate for Palestine providing for the establishment in that country of a *national* home for the Jewish people. If, therefore, the question of the national character of the latter may remain open—as in fact it does—for purposes of ethnographical or sociological research, it seems to have been definitely settled from the point of view of international law. The status of Jews no longer constitutes a mere political issue within certain States, or a diplomatic issue between States, on the ground of humanitarian protection afforded to them by such Powers as Great Britain, France and the United States; Jews as such have now become subjects of rights and duties provided for by international law. This change was rendered possible by the widening of the scope of that law itself, as since the establishment of the systems of protection of minorities and of mandates international law may be said to begin with nations while previously it began with States. It is through this extension that Jews, constituting at the present time a nation without a corresponding State, could directly be dealt with by international law across the boundaries of the various States in which they reside.

¹ Paul Fauchille, *op. cit.*, tome i. 1ère partie (1922), p. 315.

It has been argued that there is some inconsistency in granting to the Jewish people the benefits of both protection of minorities and the mandates system. According to those who hold this view, one legal consequence of the application of the mandate to Palestine would be to assimilate the status of Jews living outside the land of their national home to that of, say, Englishmen or Frenchmen residing outside England or France respectively, namely, to the status of foreigners. On the other hand, the protection of minorities, it is said, has an opposite object in view. Indeed, not only are Polish Jews, for instance, not to be considered as foreigners, but, in virtue of international treaties, they are to be recognized as possessing a status of full citizenship in Poland, with special minority rights in addition. It is consequently asked whether such a state of affairs does not create a kind of double nationality for Jews.

If inconsistency there be—and, as we shall see, this is probably not the case—it does not exist in the application of minority protection and the mandate to the Jewish people, but between two parts of what has become known as the Balfour Declaration, embodied in the mandate for Palestine. The declaration, as we have already seen, provides that

‘His Majesty’s Government view with favour the establishment in Palestine of a national home for the Jewish people . . . it being clearly understood that nothing shall be done which may prejudice . . . the rights and political status enjoyed by Jews in any other country.’¹

The question is whether this provision can be so interpreted as to imply the establishment of double

¹ It has been pointed out that the insertion of the latter part of this provision in the declaration was mainly due to apprehension on the part of Jews in western Europe that the national home might be

used as a means to deprive them of their rights of citizenship in the countries which they respectively inhabit. We shall see, however, that such apprehension as may have existed was altogether groundless.

nationality for Jews, one being connected with the national home in Palestine and the other with the countries in which they respectively reside.

In this connection it may be of interest to quote the following passage from the report of the High Commissioner on the administration of Palestine during the period of 1920-1925 :

‘ Above all, it was asked, what was the meaning of the word “national” in the Balfour Declaration ? In the languages of Eastern Europe, the words that translated “nationality” were not regarded as corresponding to “citizenship.” In Russia, in Austria, in Turkey, men were accustomed to speak of several distinct “nationalities” being members of the same State. Conversely, there was to them nothing strange in the idea of people, belonging to a single Jewish “nationality,” being resident in various countries and being citizens of those countries. In Western Europe, on the other hand, the term “a national” denoted the same thing as the term “a citizen.” All the members of a State must be of that “nationality.” Residents who were not, were aliens. People of the same “nationality” also could not normally be citizens of different States. . . . If the Jews were declared to be a “people” and entitled to a “national home,” a member of that people, it would seem, must possess that nationality. But if he were already a national of England, for example, or of France, or of the United States, was the citizenship that he cherished, unaffected by this, or was it not ? The Balfour Declaration asserted that it was unaffected. But could it, in logic or in practice, so remain ? ’¹

The allegation of inconsistency between the above-quoted two parts of the Balfour Declaration may thus be extended beyond countries in which Jews enjoy minority rights. It seems, however, to be based on the confusion of the terms ‘national’ and ‘subject’ on the

¹ *Colonial*, No. 15 (1925), p. 26.

one hand and 'national' and 'citizen' on the other.¹ The distinction between the true meanings of 'national' and 'citizen' is made by Oppenheim in the following passage (although some confusion still exists in the terms employed) :

'It must be emphasized that nationality as citizenship of a certain State must not be confounded with nationality as membership of a certain nation in the sense of a race. Thus, all Englishmen, Scotchmen and Irishmen are, despite their different nationality as regards their race, of British nationality as regards their citizenship. Thus further, although all Polish individuals are of Polish nationality *qua* race, they have been, since the partition of Poland at the end of the eighteenth century between Russia, Austria and Prussia, either of Russian, Austrian or German nationality *qua* citizenship.'²

Under the influence of colonial expansion the above distinction is gradually gaining ground even in such a unitary State as France, and this in spite of the most simplistic conception of nationality which it has inherited from the Revolution. In the opinion of Lavergne,³ 'colonial citizenship' constitutes

'a violent denial of the rationalist theory which has served as a philosophical basis to the Revolution of '89 and to the elaboration of our law: the unity of human mind, hence the desirable uniformity of civil and political laws under all climates and for all races.'

And he further says :

'The error of this mysticism which has become classical in latin countries is obvious, since the French citizen, without in the least renouncing his nationality and his private customs, acquires by the force of things a second citizenship when residing in one of our colonies.

¹ Oppenheim states that the terms of 'subject' and 'citizen' are synonymously made use of in the theory

and practice of international law, *op. cit.*, vol. i. p. 464.

² *Ibid.*

³ *Op. cit.*, p. 126.

The facts are decisive, for even in such a colonial possession as Algeria, which least differs from the Metropolis, we as French citizens enjoy, by the mere fact of our change of domicile, a political status wholly distinct from the French status. . . . A colonial citizenship is superimposed on our French citizenship. Is there any need to add that the one does not harm the other? This legal status, common as it is elsewhere, is so unusual with us that it puzzles us. Our political situation in Algeria is the same as that of the American who is a citizen of one of the 48 States of the Union, or of the Swiss who is a member of the confederation and a citizen of his canton. Rare are the unitary States like France whose members have but one citizenship.’¹

It is hardly necessary to point out that no comparison whatever is intended to be made between the status of a Jew remaining outside Palestine and that of an Englishman or a Frenchman transferring his domicile to one of the dominions or colonies of the mother country; for the latter, indeed, it is a mere change of residence, while the sovereignty under which they continue to live is the same. Nor can the status of Jews—members of one nation and subjects of different States—be compared, for example, with that of members of the various national entities composing the British commonwealth of nations. The foregoing quotation was merely made in order to illustrate the distinction between the various capacities of subject, citizen and national, a distinction which may apply to Jews no less than to other nationalities. There would hardly be any room for confusion if the term ‘national’ were used in the sense of ‘member of a nation’ and ‘subject’ in that of ‘member of a State.’ The term ‘citizen’ would remain in its proper sphere of municipal law. A citizen, indeed, is an individual to whom the municipal law of the State to which he belongs grants civil and political rights within

¹ *Ibid.*, pp. 126-127.

its sphere of application. In this sense the term 'citizen' would hardly have been dealt with by international law but for the system of protection of minorities which prescribes that individuals residing in a given State and being its subjects should be recognized as having full rights of citizenship, although not being nationals '*qua* race' of the majority of the people composing that State. A clear definition of the above terms would save a good deal of controversy not only as regards the status of Jews both within Palestine and without, but also with regard to other disputed points in international law and colonial legislation. What Oppenheim calls 'nationality *qua* citizenship' is both implied and exhausted by the term 'subject,' and what he calls 'nationality *qua* race' may in short be termed 'nationality.'

The best illustration for the suggested distinction is afforded by the instance of the British Empire, which so naturally combines nationality and citizenship. From the point of view of international law all individual members of the empire are British *subjects* (and not British nationals as they are called, because there is no such thing as a British nation, properly speaking); from the point of view of the various municipal laws of the constituent parts of the empire they are respectively *citizens* of those parts (we may therefore speak of South African citizenship and not of South African nationality, because there is no South African nation); on the other hand, the above individual members are *nationals* of the various national entities of which the British commonwealth of nations is composed.

On the basis of such distinction an attempt can be made to answer the question which was raised above regarding the status of Jews. For the Jews all over the world, as long as they remain Jews and keep their national characteristics, there is but one nationality, namely the

Jewish nationality (taken in the above sense), because they belong '*qua* race,' as Oppenheim would say, to one entity, which has been recognized as a nation. From the point of view of international law, they are subjects of the various States in which they permanently reside and to which they owe allegiance. For the purposes of the various municipal laws, Jewish subjects of those States are respectively their citizens (the capacity of citizens has been willingly granted to them by the great majority of States ; it has been granted by others as a result of international treaties containing minority clauses). As we have just seen, such a situation, based as it is on a clear-cut distinction between national, subject and citizen, is in no way unique or privileged. While it would certainly be a contradiction in terms for a Jew to be an Englishman or a Scotsman, there can be no more inconsistency between being a Jew and a British subject than between being an Englishman or a Scotsman and a British subject. These are two different capacities which, but for the prevalent confusion in terms, are wholly distinct from each other.

2. THE HISTORICAL CONNECTION OF THE JEWISH PEOPLE WITH PALESTINE

The second element on which the national home is based is what has been termed in the preamble of the mandate as 'the historical connection of the Jewish people with Palestine.' It seems hardly possible to give a clear and exhaustive definition of the expression 'historical connection' which the mandate for Palestine is the first international document to use, but a close examination of its various aspects may be made in the light of the particular circumstances to which it is meant to apply and of the mandate itself.

It has been said that paragraph 3 of the preamble, relating to the historical connection, was inserted in the

mandate as a concession to a rather sentimental and mystical idea, in order to give some moral satisfaction to the people concerned. Consequently the provision would involve no legal obligation on the part of those who gave recognition to the above connection, and no rights to those in whose favour the recognition was made. In other words, from the point of view of international law it would mean nothing at all. Such an interpretation is but one among the many which have been given to newly created international terms and expressions, on the assumption that they were no more than a concession to the 'idealist' current of opinion which was strongly represented at the Paris and other peace negotiations. Attempts have been—and sometimes still are—made to interpret in this spirit the mandates system, which is thus considered as a mere cover for wholesale annexation. Some 'realists,' as they call themselves, went so far as to look upon the Covenant of the League itself as a mere expression of pious hopes and ideals inserted in international treaties only in order to satisfy the above-mentioned current of opinion.

It can be seen from the preamble that the recognition of the historical connection was both the cause and the effect of the national home policy as laid down in the mandate. After quoting 'the declaration originally made on November 2nd, 1917, by the Government of His Britannic Majesty and adopted by the said [principal Allied] Powers,' the preamble goes on to say that 'recognition has *thereby*¹ been given to the historical connection of the Jewish people with Palestine and to the *grounds*¹ for reconstituting their national home in that country.' This provision is both declaratory of a previous state of affairs, namely, that a connection ('*lien*' in the French version of the mandate) exists between the Jewish people and Palestine, and con-

¹ The italics are the author's.

stitutory with regard to such rights and duties as may be involved. When interpreting the other provisions of the mandate affecting the national home, it is therefore to be kept in mind that the historical connection is at the foundation of such rights and duties as have been recognized in the mandate to the Jewish people in the person of its representative the Jewish agency.¹ This seems to be the construction placed upon the above provision by the British Government in the following passage :

‘ It is essential that it [the Jewish community] should know that it is in Palestine *as of right* ² and not on sufferance. That is the reason why it is necessary that the existence of a Jewish National Home in Palestine should be internationally guaranteed, and that it should be formally recognized to rest upon ancient historic connection.’ ³

The latter may thus be considered as a legal foundation of the national home.

On the other hand, it is to be pointed out that ‘ historical connection ’ and not ‘ historic right ’ is spoken of in the mandate. As may be gathered from the preliminary negotiations, this was meant to safeguard such rights and interests as have been recognized in the mandate to non-Jews within Palestine and without. Presumably it was feared that the recognition of a historic right to the Jewish people in or over Palestine would mean, if not the total exclusion of other rights, at least their relegation to a secondary plane. Moreover, the notion of ‘ historic rights ’ has been grossly abused in the course of history, and some authors were consequently led to deny their validity altogether.⁴ Either

¹ See *infra*.

² The italics are the author's.

³ *Cmd.* 1700 (1922), p. 19.

⁴ Thus Lavergne says: ‘ We deny that a historic right can ever exist. If the people governed by the State which now claims back the admini-

stration of the former, objects to the re-establishment of the old *régime*, is it not a proof that the previous government was guilty of maladministration and could not gain the sympathy of the inhabitants? To speak of historic right is to move in a vicious circle ’ (*op. cit.*, p. 56).

the historic right is in accordance with the wishes of the population concerned, and then there is no need to invoke it, or it is not, and then it does not exist.

It is hardly necessary to add that the so-called theory of 'historic rights,' as understood and applied in the course of history, has nothing whatever to do with the principle of 'historical connection' as provided for in the Palestine mandate. This may be seen from the following conditions under which the principle is applied :

(1) *The nation which is recognized as having 'historical connection' with a given territory must have been at one time of its history in possession of that territory.*—This is the first condition on which the principle is based. It involves a plain question of fact common both to 'historic rights' and 'historical connection.' But while it is the only condition of the former, it is merely one of the conditions required for the application of the latter.

Before passing on to the other conditions, distinction may be drawn between the above two theories and that of 'historic interests,' as it is sometimes called. The interests in question may be religious or educational, economic or commercial, but the actual possession of the territory by the State claiming such interests is not a necessary condition. Historic interests have indeed been claimed by, and recognized as belonging to, France in Syria, although the latter territory has never formed part of the French State. Moreover, historic interests can be claimed not only by nations or States—which alone can claim historical connection or historic rights—but even by such collectivities as churches, missions or other religious bodies. Such are, for instance, the religious interests which the Palestine mandate has safeguarded; they have been recognized as belonging not to States but to religious bodies in favour of the individuals who compose them. There

is, however, one common condition to both 'historical connection' and 'historic interests,' viz. the non-renunciation of such connection and interests by those who respectively claim them. This brings us to the second condition upon which the principle of historical connection rests.

(2) *It is essential that the people claiming the benefit of 'historical connection' with a given territory should not have previously renounced it, either explicitly or tacitly.*—Renunciation is said to be explicit when provided for by unilateral declaration or treaty,¹ while tacit renunciation may result from the fact that all claims to the territory in question have been abandoned during a more or less prolonged period of time. The institution of *prescriptio*, originally introduced from Roman law into the municipal laws of various countries mainly for reasons of social stability, may be considered as forming part also of international law for reasons of international stability. The main difference seems to be that in the latter case there are no statutes of limitation fixing periods for each category of *prescriptio* and determining factors which prevent it from running. The periods vary from one country to another; they are considerably longer in international than in municipal law, for what may be considered as a long period in an individual's life is but a brief spell in the life of States or nations. As to the factors which may prevent the *prescriptio* from taking effect, there is one universally recognized in the municipal laws of civilized States with which international law—in so far as it is based on practice—is equally well

¹ It is sometimes asked whether all renunciations by treaty can be considered as valid in spite of the obvious absence in a great many cases of mutual consent. Analogy with the law of contract is, however, hardly in place in this matter, as it would involve the invalidation of the great majority of peace treaties

containing renunciation clauses. All that can be said here is that the recent tendency in the theory of international law is to question the validity of renunciations made under obvious threat or abuse of force and resulting in the unwarranted subjection of foreign population.

acquainted; that is the fact of the person or nation, as the case may be, continuously claiming his right to the object involved.

The existence of such claim is implied in the recognition of 'historical connection.' As far as Palestine is concerned, this recognition indicates that the Jewish people has not renounced its right to the territory and has continually claimed it; that consequently no *prescriptio* could take effect against it, and that no exclusive rights could either morally or legally have been acquired over that territory by any other people. Without dwelling here upon the ideological side of the question, it may be asserted that the Jewish people as a whole has never ceased to consider Palestine as the Land of Israel (*Eretz Israel*¹), as various aspects of its daily life, religious or other, clearly indicate. Morally—and the whole question of renunciation is largely of a moral character—no breach has occurred between the Jewish people and Palestine, and this is the real foundation of 'historical connection.' *Mutatis mutandis* this is also the foundation of what is described as 'historic interests.' The historic religious interests of Christendom in Palestine are, indeed, based on the same ground of active non-renunciation as the historic national connection recognized in favour of the Jewish people, in spite of the fact that for many centuries Palestine was neither in Christian nor in Jewish possession.

(3) The third condition is that *the people which claims the benefit of 'historical connection' shall not have lost its distinct national character.* As we have already seen, 'historical connection,' unlike 'historic interests,' can only be claimed by nations as such. A non-national entity cannot—and indeed would not—claim its benefits, which are essentially of a national character. As far as the

¹ An interesting case came recently before the Courts in Palestine in connection with the use of this ex-

pression in official documents of the Palestine Government and on stamps. See *infra*, p. 259.

application of this condition to Palestine is concerned, reference may be made to the previous chapter regarding the principle of nationality and the Jewish people.

(4) *The people claiming the benefit of 'historical connection' with a given territory shall not have acquired in the meantime any other national territory of its own.*—This is also a condition. Indeed, such acquisition would *prima facie* imply renunciation. Had the Jewish people as a whole, on leaving Palestine, acquired another territory and established there an independent national community, there seems to be little doubt that its claim to 'historical connection' with Palestine would have been forfeited. Thus, had the Jewish people accepted such an offer as that of Uganda made by the British Government in 1903—unless under special reservation of its claim to Palestine: stating, for instance, that the new territory is to be considered merely as a temporary refuge for the persecuted Jews—and established there a national life of its own, it would have forfeited the 'historical connection' with its ancient home. Palestine would have become for the Jewish people also no more than the Holy Land, in which it could claim only historic interests of a religious character, similar to those recognised as belonging to Christendom and Islam. The fact, however, that the Jews have established themselves individually or in groups in various countries after having been forced to leave Palestine can hardly be construed as implying renunciation. Communal autonomy in certain countries, 'emancipation' in others, and minority rights in more recent times seem equally irrelevant for the purpose, as ever since they left Palestine the Jews as such had no national territory of their own although they retained their distinct national characteristics.

(5) Another essential condition is that *such other rights and interests as may have been acquired in the meantime*

shall be safeguarded. 'Historical connection,' similar in this respect to historic interests and opposed to historic rights, implies the recognition and safeguarding of other rights which may have been acquired in or to the territory in question during the absence of the people in whose favour the above connection was recognized. It is not exclusive of such rights, just as no other exclusive rights could have been acquired in or to a territory in regard to which a historical connection is recognized. The effect of the recognition of such connection in favour of a given people seems thus to be retroactive, but in no way exclusive; it contains a reservation. Indeed, as we have already seen, one of the reasons why the expression of 'historical connection' was used in the mandate is that it does not convey the exclusiveness connoted by 'historic rights' as conceived and applied in the course of history. This is one of the main points which are to be kept in mind in the interpretation of the mandate itself, the foundation of which—as it now stands—is the reconciliation of the various rights and interests involved in Palestine. The nature and extent of all rights and interests thus reserved are to be gathered from the various provisions of the mandate as well as from the general formula safeguarding 'the civil and religious rights of existing non-Jewish communities.'

(6) In order to be valid, '*historical connection*' is to be *internationally recognized*. The recognition is necessarily declaratory since the connection is historic in character and therefore existed prior to its formal recognition. It does not create the connection, but implies an obligation on the part of its authors to abstain from interfering with such rights as may be involved. It is therefore essential that the recognition should be of international character, *i.e.* given by several States or an international body on which they are represented. The recognition

by the League of Nations, in the mandate, of the historical connection of the Jewish people with Palestine may be said to have, in some respects, the effect of a collective recognition by all the States represented in the League.

3. THE CONCEPT OF A NATIONAL HOME, AS APPLIED IN PALESTINE

The principle of nationality, in so far as it concerns the Jewish people, and the historical connection between the latter and Palestine, as recognized in the mandate, constitute the foundations of the Jewish national home in Palestine. It is in this light that the new term of 'national home' is to be interpreted. Before, however, any attempt can be made to examine the nature and scope of the national home, as applied in Palestine under the special conditions of the mandate, a few preliminary remarks seem to be necessary in view of the fact that the whole question has sometimes been considered as altogether outside the domain of international law. Looked at from this point of view, the tendency to emphasize the moral as against—or even at the expense of—the legal aspect of the question seems to be the result of the idea that international law is still exclusively concerned with such notions as State and sovereignty, and that all principles or institutions which remain outside their scope do not belong to international law properly speaking. The League of Nations and all that is being gradually built up around it seem to have definitely disposed of this narrower conception of international law. There is certainly a moral foundation to the national home just as there is a moral foundation to the League of Nations itself, to the mandates system, and to all other institutions, old and new, which make for the progress and development of international law. But

this can hardly be said to deprive them of their legal character as expressed in rights and duties recognized and sanctioned by international agreement. The principle laid down in all modern legal systems that, to use the words of the French Civil Code, '*le contrat fait la loi des parties*' cannot be questioned in international law any more than in municipal law, or it would hardly be possible to speak of international law at all. If it is admitted, as seems to be generally the case, that the Covenant of the League of Nations and the various mandates are international conventions in the legal sense of this term,¹ there is no apparent reason why a certain part of one such convention, namely that part of the Palestine mandate affecting the Jewish national home, should be differently treated from the rest.

The document in which the new term of 'national home' was first used is the declaration of November 2, 1917, made by the British Government and generally known as the Balfour Declaration. Some explanation of what is meant by this term is given by its author himself when he says that the assimilation of 'the national and international status of the Jews to that of other races . . . would be promoted by giving them that which all other nations possess: a local habitation and a national home.'² In the opinion of the author of the declaration, therefore, a national home is 'that which all other nations possess,' and it tends to assimilate the national and international status of those whom it is to benefit to that of other races.

A somewhat similar construction was placed upon the term 'national home' in the course of the debates which took place at the Second Assembly of the League of

¹ It is not quite clear what the Supreme Court of Palestine meant by saying that the mandate was a 'political document' (*Suleiman Murra v. Attorney General of Palestine*), in view of the fact that its interpreta-

tion is largely entrusted to Courts of Law, both municipal and international.

² Introduction by Lord Balfour to *History of Zionism* by N. Sokolow, vol. i. p. xxxiii.

Nations on the Armenian question. The following resolution, proposed by the sixth committee, was then unanimously adopted :

‘The Assembly urges the Council to press upon the Principal Allied Powers the necessity of making provisions in the treaty [between Turkey and the Allied Powers] for safeguarding the future of Armenia, and in particular of providing the Armenians with a *national home* entirely independent of Turkish rule.’¹

Intervening in the debate, the French representative interpreted the resolution as meaning that ‘an independent State of Armenia will be created.’² But if ‘national home’ and ‘independent State’ are to be synonymous, it may be asked why a new term had to be created. There can be little doubt, however, that both in the British declaration of 1917 and the League resolution of 1921 the term ‘national home’ was intentionally used, to the exclusion of other terms, in order to meet a wholly new situation. A comparison between the respective situations in Armenia and Palestine may indeed prove of assistance in the attempt to interpret the above term and to find its underlying principle.

The creation of an Armenian ‘free and independent State’ which was contemplated by the Principal Allied Powers and which Turkey had to recognize in the Treaty of Sèvres (Article 88) proved premature. The State was nipped in the bud by the Turkish nationalist movement, which ultimately brought about the revision of the treaty. Left as it was without protection, the Armenian State could hardly defend itself, and the number of Armenians who remained in the country began to decrease rapidly through wholesale massacre and emigration. In order to re-establish an Armenian community on Armenian soil it was necessary to secure some sort

¹ *R.A.* (1921), P., p. 299.

² *Ibid.*, p. 298.

of protection for the territory, so that those willing to return might do so. This aim was to be achieved through the national home policy coupled with the mandates system, the application of which to Armenia was contemplated by the Supreme Council in its decision of March 1921. It is this very decision which was subsequently approved by the above-quoted resolution of the Second Assembly of the League ; and had a Power been found willing to act as a Mandatory on behalf of the League in Armenia, the situation from the point of view of the national home policy would have been somewhat similar to that of Palestine. The League would have protected and encouraged, through its Mandatory, the return of the people to the land from which it was expelled, with a view to re-establishing there an independent national community. While in Palestine, however, the carrying into effect of the national home policy was rendered possible by the acceptance of a mandate by Great Britain, there was, as we have seen, no State to be found which would be prepared to accept the functions of a Mandatory in Armenia.

The following conclusions may be drawn in the light of the above remarks :

1. Both the mandates system and the national home policy apply when the immediate creation of an independent community is as yet impossible—in the case of the former, owing to the local community not being able to stand alone, and of the latter, owing to the absence of the people whose right to the country has been duly recognized. The national home in itself, therefore, cannot be considered as a State, but, where contemplated, is to be established within a State under the protection and with the assistance of a mandatory Power.

2. The connection between the mandates system and

the national home policy is not limited, however, to the necessity of international protection through the medium of a selected Power. It is the principle of the use of such protection with a view to creating an independent national community which lies at the foundation of both.

3. The mandates system and the national home policy are therefore of an essentially transitional character; they are means to an end and thus differ from the other post-war institution, the protection of minorities, which is an end in itself.

4. All three are fundamentally institutions of peace in the widest sense of the term. Such local friction as may result from their application is more than counter-balanced by their salutary effect on international peace. The League of Nations, being the competent authority in all matters 'affecting the peace of the world,' is therefore the natural institution for the purpose of carrying into effect the mandates system and the national home policy, on the one hand, and the protection of minorities, on the other. When the Armenian question was again dealt with by the League, at its third Assembly, Lord Robert Cecil declared himself to be in favour of the national home policy because he believed that 'the settlement of the Armenian question would do much to safeguard peace,'¹ and he went on :

'Undoubtedly, that policy is a sound one, not only in the case of Armenia, but in the case of other minorities. Wherever you find a minority—a national, linguistic or racial minority—in condition of disturbance or unrest, it constitutes a threat, more or less serious, to the peace of the world, and, from the very kernel and foundation of the League of Nations, it results that we ought to do what we can to put an end to a state of things of that description.'²

Lord Cecil gave a similar reason in favour of the Jewish national home in Palestine when he said that 'the Zionist policy seems to me of vital importance to the

¹ *R.A.* (1922), P., vol. i. p. 207.

² *Ibid.*

world. A nation without a country of its own is an anomaly, and anomalies bring trouble.' ¹

Various Interpretations of 'National Home.'—We have seen that attempts have been made to question the legal aspect of the national home policy from the point of view of its connection with international law. Had those attempts proved successful, the national home would have been deprived of such guarantees as are offered by international law. It was further contended that apart from the question of sanction and guarantee the national home in itself is of merely moral value, having for its aim the creation in Palestine of a spiritual centre for the Jewish people, its language and religion. For this purpose a number of educational and religious institutions and a spiritual *élite* would amply suffice in Palestine, and no immigration and colonization schemes on a large scale would be necessary. The local inhabitants would not object to such 'national home' any more than to the various religious rights and interests safeguarded in the mandate.

It may, however, be asked whether a special declaration by the British Government was necessary in order to achieve such a purpose, as there seems to be no reason in this case why the provisions regarding the national home should not have been drafted on the same lines as those safeguarding the purely spiritual interests of the various religions in Palestine. In fact, Palestine has never ceased to be the spiritual centre of the Jewish people, and it is not *post hoc*, in order merely to recognize a pre-existing state of affairs, that the declaration was made, but *propter hoc*, with a view to a new achievement. If it is true to say, as we have seen, that the declaration of November 2, 1917, is declaratory of the historical connection, it is equally true that it is constitutory of the national home.

¹ J. de V. Loder, *op. cit.* Foreword by Lord Robert Cecil.

Moreover, the above contention is directly contradicted by the text of the mandate itself. Unlike the others, the mandate for Palestine had two distinct instruments to carry into effect: Article XXII of the Covenant and the declaration previously made by the British Government. The interpretation of these two documents as embodied in and supplemented by the mandate is the only operative and legally binding interpretation. Consequently, before any speculative construction is placed upon the national home—and this seems to be very largely done—one is undoubtedly bound to consult the various provisions of the mandate bearing on the national home. Had it been intended to create a merely spiritual centre for Jews in Palestine, there would hardly have been any reason to provide for 'such political, administrative and economic conditions as will secure the establishment of the Jewish national home' (Article 2); nor would it have been necessary to recognize a Jewish agency and to provide for the immigration of Jews, their settlement on the land and naturalization.

The placing of this construction on the national home was largely based on political considerations, and had the avowed aim of allaying local susceptibilities. It was rendered more plausible by the material impossibility of the whole Jewish people settling in Palestine owing to its limited area. Palestine, it was contended, cannot contain all the Jews of the world, and consequently must remain a spiritual or moral centre for those who cannot settle there. This may be true as far as it goes; it does not imply, however, that Palestine should also remain a purely spiritual centre for those who do settle there. The fact that the majority of, say, the Irish people live outside Ireland could hardly be used as an argument to deprive the minority which remain there of independent national life.

The official interpretations, as we shall see, undoubtedly exclude the purely spiritual character of the Jewish national home in Palestine, although their intentional vagueness hardly permits of a clear definition of the national home from official sources. The first attempt of the Mandatory—or more precisely his representative, the High Commissioner for Palestine—to define the national home was made on June 3, 1921, in the following terms :

‘ These words [national home] mean that the Jews, who are a people scattered throughout the world, but whose hearts are always turned to Palestine, should be enabled to found here their home, and that some amongst them, within the limits fixed by numbers and the interests of the present population, should come to Palestine in order to help by their resources and efforts to develop the country to the advantage of all its inhabitants.’¹

It may be pointed out that this declaration was made after, and as a consequence of, the serious disturbances which took place in Palestine during May 1921 and resulted in a partial weakening of the position and prestige of the then prospective Mandatory. These circumstances largely explain both the vagueness of the declaration and its tone, which reads almost like an appeal to the local inhabitants, their sense of justice and humanity. The declaration is a purely political instrument both in respect of the reasons which prompted its promulgation and its actual language ; it is quoted here on account of its official character, which gave it a certain importance at the time it was made, but it can hardly assist us materially in ascertaining the exact legal construction placed by the Mandatory upon the national home.

On June 3, 1922, a statement was issued by the Colonial Office on ‘ British policy in Palestine,’ of which the following extracts are relevant for our present purpose :

¹ *Cmd.* 1700 (1922), pp. 6-7.

‘Unauthorized statements have been made to the effect that the purpose in view is to create a wholly Jewish Palestine. Phrases have been used such as that Palestine is to become “as Jewish as England is English.” His Majesty’s Government regard any such expectation as impracticable and have no such aim in view. Nor have they at any time contemplated, as appears to be feared by the Arab Delegation, the disappearance or the subordination of the Arabic population, language or culture in Palestine. They would draw attention to the fact that the terms of the declaration referred to [the Balfour Declaration] do not contemplate that Palestine as a whole should be converted into a Jewish national home but that such a home should be founded *in Palestine*.’¹

After describing the existing Jewish community in Palestine ‘with its town and country population, its political, religious and social organizations, its own language, its own customs, its own life,’ the statement says that it ‘has in fact “national” characteristics,’ and proceeds in the following terms :

‘When it is asked what is meant by the development of the Jewish national home in Palestine, it may be answered that it is not the imposition of a Jewish nationality upon the inhabitants of Palestine as a whole, but the further development of the existing Jewish community, with the assistance of Jews in other parts of the world, in order that it may become a centre in which the Jewish people as a whole may take, on grounds of religion and race, an interest and a pride. But in order that this community should have the best prospect of free development and provide a full opportunity for the Jewish people to display its capacities, it is essential that it should know that it is in Palestine as of right and not on sufferance. . . . This, then, is the interpretation which His Majesty’s Government place upon the declaration of 1917.’²

This interpretation was formally endorsed by the

¹ *Ibid.*, p. 18.

² *Ibid.*, p. 19.

Zionist Organization in its capacity, for the time being, as the Jewish agency provided for in Article 4 of the mandate.¹

Three general principles may be disengaged from the above interpretation as constituting the essential elements of the Jewish national home in Palestine. They are to the effect

- (1) *that the Jewish national home is to be founded in Palestine and not that Palestine as a whole is to be converted into a Jewish national home ;*
- (2) *that the Jewish people as a whole, and not merely the existing Jewish community in Palestine, should be given full opportunity to establish the national home ; and*
- (3) *that the Jewish community in Palestine, thus assisted by the efforts of the Jewish people as a whole, is in Palestine as of right and not on sufferance.*

(1) The first principle is based on the very wording of the declaration of 1917 and the preamble of the mandate, both of which provide for the 'establishment in Palestine of a national home for the Jewish people.' Although the wording itself does not necessarily imply all such limitations as have subsequently been made by the Mandatory, there can be little doubt that a somewhat restrictive construction was placed on the national home scheme from its very inception. This may be seen, indeed, from the preparatory documents and the preliminary negotiations (in so far as they were made public) which resulted in the issue of the above declaration. The fact, for instance, that the expression 'a national home for the Jewish people' was preferred to 'Jewish Common-

¹ The resolution runs as follows: 'The Executive of the Zionist Organization, having taken note of the statement relative to British policy in Palestine, transmitted to them by the Colonial Office under

date June 3rd, 1922, assure His Majesty's Government that the activities of the Zionist Organization will be conducted in conformity with the policy therein set forth' (*Cmd.* 1700 (1922), pp. 28-29).

wealth,' as proposed at one time, and that the above final formula was substituted for 'the re-establishment of Palestine as the national home of the Jewish people,' seems strongly to point in this direction. It may therefore be said that, on the whole, the interpretation given by the British Government in its statement of 1922 to the 'national home' is not inconsistent either with the letter or the spirit of the declaration as embodied in the preamble of the mandate.

What does this interpretation imply? It excludes, in its own terms, 'the subordination of the Arabic population, language or culture in Palestine' or 'the imposition of a Jewish nationality upon the inhabitants of Palestine as a whole.' Palestine is thus not to be exclusively Jewish, since the existing native population has a recognized share in it. It has acquired rights and interests in the country and is entitled to keep them. This is, in short, what the first principle means.

Attempts have been made, mainly since—and possibly as a consequence of—the above official interpretation, to elaborate a sort of new theory to the effect that the establishment of two national homes was contemplated in Palestine, one for Jews and the other for Arabs. It is to be pointed out, however, that there is no question of an Arab national home in any of the instruments on which the status of Palestine is based, and no interpretation can obviously go so far as to create new institutions. Moreover, a national home is not merely destined to safeguard rights and interests of a given community. Either it applies to a people as a whole—this, indeed, is one of the main characteristics of the Jewish national home, as we are going to see—or it is not a national home in the proper sense of the term. This point, however, will be brought out more clearly on examination of the second principle of the official interpretation with which we are concerned here.

(2) In virtue of this principle it is not merely the existing Jewish community in Palestine which has been recognized as possessing the right to a national home, but the Jewish people as a whole. The Jewish population in Palestine is, so to speak, merely a representative community of the Jewish people for the purposes of the national home. This is what the formula 'national home for the Jewish people' clearly means, and this is what it cannot mean, as things now stand, with regard to any other people. No one can deny the acquired rights and interests of the existing non-Jewish communities in Palestine, nor can it be maintained that these rights and interests are not guaranteed and sanctioned equally with the national home. But it seems hardly possible to assert that the Arab people, in its capacity as such, has been recognized as possessing any national right to Palestine. This is, however, what a national home for Arabs would imply. The difference between Jews and Arabs in respect of their relation to Palestine may be summarized as follows: While, in virtue of the national home, Jews, *in their capacity as such*, were recognized as possessing a right to Palestine, the Arabs were granted rights in Palestine in their capacity as, and in so far as they actually are, local inhabitants of that country. This fundamental difference in principle is amply illustrated by its legal consequences, as embodied in various provisions of the mandate, which will be dealt with in detail later on. In this connection it is sufficient to mention here Article 4 of the mandate, providing for the creation of a Jewish agency¹; Article 6, placing the Mandatory under obligation to 'facilitate Jewish immigration under suitable conditions'; and Article 7, whereby the Mandatory shall 'facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine.' No such

¹ With regard to the proposed 'Arab agency' see *infra*, pp. 97-100.

provisions, nor any similar, exist in the mandate in favour of any other people.

(3) The third principle, as embodied in the official interpretation given by the British Government to the term 'national home,' is that the Jewish community in Palestine is there 'as of right and not on sufferance.' No such right is referred to expressly either in the declaration of 1917 or the mandate, and this seems to have been the main reason for a good deal of early scepticism as to its very existence. We have seen that the formula of 'establishment in Palestine of a national home for the Jewish people' was substituted in the declaration, and consequently in the mandate, for 're-establishment of Palestine as the national home of the Jewish people.' Apart from the construction placed by the Mandatory upon the difference between these two formulae, as we have just seen, this substitution is even more important for the bearing which it has on the very nature of the national home. It seems indeed, at first sight, to emphasize that what was intended by the national home policy was not to re-establish the same relations as existed in ancient times between the Jewish people and Palestine, but to create some sort of new relation to be defined by and implied in the term 'national home.' This construction, however, leaves the term as vague as ever, and that is apparently why it was felt necessary to add to the formula of the declaration a special paragraph in the preamble of the mandate, asserting the historical connection between the Jewish people and Palestine. Thus, this provision not only constitutes one of the foundations of the national home, but also greatly helps towards finding a definition of the national home itself.

In the light of the above remarks it may be said, in conclusion, that the national home policy consists of the *ensemble* of measures to be taken by the Mandatory,

with a view to the creation, within the framework of the future Palestinian State, of an independent Jewish community out of such elements as will return to Palestine in virtue of the historical connection recognized as appertaining to the Jewish people as a whole.

CHAPTER II

OBLIGATIONS OF THE MANDATORY RESULTING FROM THE NATIONAL HOME POLICY

BEFORE dealing with the obligations assumed by the Mandatory in virtue of the national home policy, it seems necessary to draw attention to the fact that some controversy may arise—and in fact has arisen—as to whether certain provisions of the mandate had their origin in the above policy or in the mandate properly speaking. This question is not merely theoretical, especially as regards the provision embodied in Article I of the mandate.

It is argued that the reason why in Palestine alone of the ex-Turkish provinces placed under mandate the Mandatory has been given 'full powers of legislation and of administration' is to be found in the national home policy. There can be little doubt that this policy was one of the main reasons for the above provision, as appears from the reply of the Colonial Office to the Arab delegation in London who, *inter alia*, asked for 'the creation of a national independent government in Palestine.' The following quotation, indeed, sufficiently illustrates this point :

'There is no question of treating the people of Palestine as less advanced than their neighbours in Iraq and Syria ; the position is that His Majesty's Government are bound by a pledge which is antecedent to the Covenant of the League of Nations, and they cannot allow a constitutional position to develop in a country for which they have accepted responsibility to the Principal Allied Powers, which may make it impracticable to carry into effect a

solemn undertaking given by themselves and their Allies.' ¹

On the other hand, however, it is maintained that the national home policy is not the only reason for the insertion of Article 1 in the mandate, on the ground that the Article in question equally applies to Transjordan, where the application of the above policy has been withheld in virtue of Article 25 of the mandate.

The best way of ascertaining the Mandatory's view as to what obligations have been assumed by him in pursuance of the national home policy, and what in virtue of the mandate properly speaking, is to refer to the Memorandum sent by the British Government to the Secretary General of the League of Nations² enumerating the provisions of the mandate *not* applicable to Transjordan on account of the non-application to this territory of the national home policy.³ *A contrario*, the following provisions of the Palestine mandate have, in the opinion of the Mandatory, their origin directly in the above policy :

1. *Preamble—Recitals 2 and 3.*—These provisions refer to the declaration of November 2, 1917, and to the historical connection of the Jews with Palestine.
2. *Article 2*—the words 'placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home, as laid down in the preamble.' This provision contains the enunciation of the general principle upon which are based the various obligations of the Mandatory connected with the national home policy.
3. *Article 4*—dealing with the Jewish agency.
4. *Article 6*—concerned with the question of Jewish immigration and close settlement by Jews on the land.

¹ *Cmd.* 1700 (1922), p. 6.

² *Cmd.* 1785 (1922), pp. 10-11.

³ Articles 13 and 14 of the Palestine mandate are equally mentioned as

non-applicable to Transjordan because of there being no Holy Places to safeguard in that territory.

5. *Article 7*—the sentence ‘There shall be included in this [nationality] law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine.’
6. *Article 11*—the second sentence of the first paragraph dealing with close settlement on and intensive cultivation of the land in pursuance of Article 6; the second paragraph concerning public works and concessions which may be arranged with the Jewish agency.
7. *Articles 22 and 23*—dealing respectively with the recognition of English, Arabic and Hebrew as official languages in Palestine and of the holy days of the various communities.

The provisions embodied in the preamble and Article 2 of the mandate are of a general character, affecting as they do the national home policy as a whole and not being concerned like the others with special obligations arising out of this policy. Before the latter are dealt with, it may be pointed out that particular importance is to be attached to the fact that such general obligation was assumed by the Mandatory side by side with obligations of a special and definite character. According to the usual rules of interpretation this would lead to the following conclusions :

1. The enumeration of the special obligations, following as it does upon the general provision, constitutes a series of illustrations of what the Mandatory is under obligation to do in pursuance of the national home policy, rather than a list of obligations of a limitative character. Out of the principal obligation, as laid down in both the preamble and Article 2, a series of new obligations which have not been explicitly provided for in the mandate may indeed arise in course of application of the latter. Any new question regarding the national home policy which

may subsequently arise is thus to be given such solution as is consistent with the above general obligation.

2. This is also the case as regards the express provisions of the mandate directly connected with the national home policy. They are to be interpreted and applied in the light of the general provision, wherever involved. The latter may thus be considered as constituting a guiding principle for the interpretation and application of the special obligations assumed by the Mandatory in virtue of the national home policy.
3. The various other provisions, namely those that have their source in the mandate properly speaking, are equally to be construed so as not to be in conflict with the above general provision, just as the construction placed upon the latter is to be in accordance with the other underlying principles of the mandate, such as the safeguard of the 'civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion.'

These appear to be the main consequences of the insertion in the mandate for Palestine of a general provision relating to the national home policy. An analogy to this may be found in Article XXII of the Covenant, where side by side with the various provisions concerning slave trade, arms and liquor traffic, etc., there is the general and fundamental principle that 'the well-being and development of such peoples [placed under mandate] form a sacred trust of civilization.' This general provision—in spite of the fact that its wording has more of a moral and humanitarian than of a legal character—had the most decisive bearing on the interpretations which the Permanent Mandates Commission was called upon to make with regard to various questions not expressly dealt with in the texts of the mandates. The above general provision has, indeed, been frequently

resorted to as a guiding principle in the decisions of the Commission on questions of administration, finance, nationality, etc., in mandated territories.

The special obligations assumed by the Mandatory in virtue of the national home policy as embodied in the mandate may be dealt with under the following heads :

1. The Jewish Agency.
2. Immigration and Settlement on the Land.
3. Public Works and Concessions.
4. Nationality and Naturalization.

1. THE JEWISH AGENCY

The recognition of a Jewish agency is the first special obligation which the Mandatory has assumed in virtue of the national home policy. Article 4 of the mandate provides that

‘An appropriate Jewish agency shall be recognized as a public body for the purpose of advising and co-operating with the Administration of Palestine in such economic, social and other matters as may affect ¹ the establishment of the Jewish national home and the interests of the Jewish population in Palestine, and, subject always to the control of the Administration, to assist and take part in the development of the country.

3 ‘The Zionist Organization, so long as its organization and constitution are in the opinion of the Mandatory appropriate, shall be recognized as such agency. It shall

¹ The word ‘effect’ was used in the final draft mandate submitted for the approval of the Council of the League of Nations (*Cmd.* 1500, 1921). The modification figures among the list of ‘verbal alterations’ communicated by the Mandatory to the Secretary General of the League (*Cmd.* 1708, 1922). It may be asked, however, whether the substitution of the word ‘affect’ for ‘effect’ does not imply some

widening of the attributions of the Jewish agency. Indeed, it is said that the matters in which the advice and co-operation of this agency are to be sought need not be of such vital importance as to ‘effect’ or execute the establishment of the Jewish national home, but must only be of such a character as merely to ‘affect’ or concern the latter.

take steps in consultation with His Britannic Majesty's Government to secure the co-operation of all Jews who are willing to assist in the establishment of the Jewish national home.' ¹

Organization of the Jewish Agency

The only direct provision to be found in the mandate concerning the organization of the Jewish agency is the one embodied in the above Article 4 (first sentence of paragraph 2) which confers the capacity of the Jewish agency upon the Zionist Organization 'so long as its organization and constitution are in the opinion of the Mandatory appropriate.' It was apparently the desire of the authors of the mandate to leave to those concerned the question of deciding as to the best way of organizing the agency on such lines and principles as are most in conformity with their own methods and conceptions. This question remains, therefore, as a constitutional and internal question for the competent public authority of the Jewish people, *i.e.* for the Zionist Organization itself.

According to the constitution of the Zionist Organization, the Congress, whose members are elected by all Zionists belonging to the local Federations throughout the world, is the sovereign authority as regards all matters affecting Zionist aims in Palestine. It elects an Actions Committee, which is a sort of permanent board controlling the activities of the Executive—equally elected by the Congress—during the inter-congressional period. The Executive, whose members reside partly

¹ In connection with Article 4, providing for the recognition of a Jewish agency, it may be of interest to mention that soon after the Balfour Declaration, and before the mandate was thought of, it was suggested in various quarters to establish a Chartered Company for the purpose of carrying the national

home scheme into effect. As to the status and functions of the proposed Company, which was to differ considerably from its predecessors (such as the East India and the South Africa Companies), see H. Sidbotham, *England and Palestine*, pp. 230-234.

in Palestine (Palestine Zionist Executive)¹ and partly in London, is responsible to the Congress, which under normal conditions meets every two years.

According to the Memorandum submitted by the Zionist Organization to the Secretary General of the League of Nations for the information of the Permanent Mandates Commission (October 1924),²

‘the main duties of the London Executive are to represent the Zionist movement *vis-à-vis* the mandatory Power ; to provide the necessary financial resources for constructive work in Palestine ; and to supervise the activities of Zionist Federations throughout the world.’

The activities of the Palestine Executive are divided between its following Departments : Political (responsible for the conduct of relations with the Palestine Government and the non-Jewish communities in Palestine), Colonization, Immigration, Labour, Public Welfare, Education and Finance.³

As early as 1919 the Zionist Organization was invested with the capacity to speak on behalf of Jewish aspirations in Palestine before the Paris Peace Conference, and such recognition has again, though conditionally, been extended to it under the provisions of the mandate. It may, however, be pointed out that it is the Jewish people as a whole and not Zionists as such which has been recognized as possessing the right to a national home in Palestine, and which is consequently to be represented by the Jewish agency. The following resolution has therefore been adopted by the Executive

¹ The P.Z.E. took the place of the Zionist Commission allowed by the British Government to proceed to Palestine in 1918. The objects and status of the Commission were laid down as follows: ‘The Commission should represent the Zionist Organization. It should act as an advisory body to the British authorities in Palestine in all matters

relating to Jews, or which may affect the establishment of a national home for the Jewish people, in accordance with the declaration of His Majesty’s Government.’ Quoted by N. Sokolow, *op. cit.*, vol. ii. p. 140 ; see also *Palestine*, vol. iii., No. 6 (March 16, 1918), p. 42.

² p. 9.

³ p. 10.

of the Zionist Organization and subsequently endorsed by the 13th Zionist Congress in August 1923 :

‘ That negotiations be opened with the representatives of leading Jewish communities and organizations with a view to providing for the participation of those bodies in the Jewish agency and to devising the most appropriate methods of constituting the agency.’¹

It was thus intended to make the Jewish agency into a representative body of the Jewish people as a whole and not merely of those formally belonging to the Zionist Organization. The proposed enlargement of the Jewish agency when carried out may necessitate the revision of Article 4 of the mandate, and the Mandatory has rightly been informed of the above resolution, although in his opinion the matter is one which ought to be left to the discretion of the Zionist Organization.²

Functions of the Jewish Agency

According to the various provisions of the mandate, the functions of the Jewish agency are the following :

1. To advise and co-operate with the Administration of Palestine ‘ in such economic, social and other matters as may affect the establishment of the Jewish national home and the interests of the Jewish population in Palestine ’ (Article 4, paragraph 1).
2. To ‘ assist and take part in the development of the country ’ subject to the control of the Administration (*ibid.*).
3. To ‘ take steps in consultation with His Britannic Majesty’s Government to secure the co-operation of all Jews who are willing to assist in the establishment of the Jewish national home ’ (Article 4, paragraph 2).
4. To co-operate with the Administration of Palestine as

¹ Memorandum of the Zionist Organization to the League of Nations, p. 7.

² Letter of the Colonial Office to the Zionist Organization dated March 12, 1923, *ibid.*, p. 8.

regards 'close settlement by Jews on the land, including State lands and waste lands not required for public purposes' (Article 6).

5. If and when asked by the Administration, 'to construct or operate, upon fair and equitable terms, any public works, services and utilities, and to develop any of the natural resources of the country, in so far as these matters are not directly undertaken by the Administration' (Article 11).

The general character of the Jewish agency as it appears from the functions conferred upon it in the above-quoted provisions of the mandate may be summarized under the following propositions:

1. *The Jewish agency is a representative body of the Jewish people* for all purposes connected with the national home in Palestine. It is recognized as speaking on behalf of the Jewish people and for its benefit. It is a special agency, however, having no general competence to represent the Jewish people except for the above purposes and—subject to what will be said below—before the Mandatory alone.
2. *The Jewish agency is an intermediate body* acting² between the Jewish people and the Mandatory; it serves as an organ of liaison between them. On the one hand it is empowered by its own constitution to lay before the Mandatory all claims of the Jewish people with regard to the national home policy, and on the other it is accorded what has sometimes been termed 'the right of access' to the Mandatory in connection with the above policy.
3. *The Jewish agency is an advisory body to the Mandatory* on all questions affecting the national home policy. In its capacity as such, no restriction is laid upon the Jewish agency, although on the other hand no provision exists in the mandate as to the extent to which the Mandatory is to take into consideration or to follow the advice given by the Jewish agency.
4. *The Jewish agency is a 'public body' recognized by the*

Mandatory mainly for such purposes as concern the development of the country. This point will be dealt with in detail in connection with Article 11 of the mandate,¹ but it may be of interest to note here that a fairly wide interpretation seems to have been given by the Permanent Court of International Justice to the expression 'public body' used in the above-quoted Article 4 of the mandate. It is on account of the Jewish agency being such a body that its collaboration in the development of the country is regarded by the Court as a manifestation of a 'program of economic policy' which the Administration of Palestine may carry out.² Opinions of certain dissenting judges seem to have gone even further than that.³

5. *The Jewish agency has no administrative functions*; it co-operates with the Government of Palestine not in the administration of the country but in its development. It has been pointed out by the Mandatory, in the outline of 'British Policy in Palestine,'⁴ that 'the Zionist Commission in Palestine, now termed the Palestine Zionist Executive, has not desired to possess, and does not possess, any share in the general administration of the country. Nor does the special position assigned to the Zionist Organiza-

¹ See *infra*, Public Works and Concessions, p. 131 *et seq.*

² *P.C.*, Series A, No. 2, p. 21, and No. 11, p. 37.

³ According to the dissenting opinion of M. Altamira, 'the recognition of that Organization [the Jewish agency] as a true public body, with the rights conferred on it by Article 4 of the mandate, implies that it must be accorded privileged or exceptional treatment' (*P.C.*, Series A, No. 11, p. 37). Another dissenting judge, M. Caloyanni, goes so far as to assert that 'the Zionist Organization is so closely connected with the Palestine Administration that for purposes of developing the country as regards economic questions and as regards works of public utility, it appears

to be unable to do without this Organization, unless it consented.' 'The words contained in Article 4,' he continues, 'are imperative as far as concerns the co-operation of the Jewish Organization in all economic questions and those concerning the development of the country; indeed, the words employed in the French text are: *aura le droit [de donner des avis à l'Administration de la Palestine et de coopérer avec elle dans toutes questions économiques, sociales ou autres . . . et . . . d'aider et de participer au développement du pays]* . . . the only restriction being, in relation to all these matters, that the Palestine Administration reserves the right of control' (*ibid.*, p. 50).

⁴ *Cmd.* 1700 (1922), pp. 17-21.

tion in Article 4 of the draft ¹ mandate for Palestine imply any such functions. That special position relates to the measures to be taken in Palestine affecting the Jewish population, and contemplates that the Organization may assist in the general development of the country, but does not entitle it to share in any degree in its government.' ²

This has also been emphasized in the Note of the British Government to the Secretary General of the League of Nations in reply to Cardinal Gasparri's letter of May 15, 1922, and corroborated by the fact that 'the draft Order in Council providing for the administration of Palestine does not even refer to the existence either of a Jewish agency or of the Zionist Organization.' ³ And this point has again been referred to in the correspondence on the proposed formation of an Arab agency, where it is stated that 'this position was officially accepted by the Zionist Organization at the time.' ⁴

The frequent reiteration of these statements by the Mandatory was apparently prompted by desire to allay any doubts or misgivings—which have mainly arisen in Arab and Catholic spheres—as to the nature of the Jewish agency's functions, although it may be said that the text of the mandate itself is sufficiently clear and precise on this point. Where the text is rather vague is as to the extent of these functions. The following two questions may, indeed, be raised in this connection :

- (1) Is the representative character of the Jewish agency limited to the relations of this body with the Mandatory alone ?
- (2) How far has the advisory capacity of the Jewish agency been limited by the text of the mandate ?

With regard to the first question, it may be pointed out

¹ This was before the ratification of the mandate by the Council of the League of Nations.

² *Cmd.* 1700 (1922), p. 18.

³ *Cmd.* 1708 (1922), p. 4.

⁴ *Cmd.* 1989 (1923), p. 4.

that nowhere in the mandate is there any provision, either express or implied, entitling the Jewish agency to act in its representative capacity except before the Mandatory (the Palestine Administration in Jerusalem and His Britannic Majesty's Government in London). There would have been no such question at all were it not for the fact that the Jewish agency was recognized in the mandate itself—which is an international instrument—and not in virtue of a constitutional grant made by the Mandatory for reasons of convenience or expediency, as has been contemplated with regard to the proposed Arab agency. In the absence of any text, however, it seems that the representative capacity of the Jewish agency is limited to the relations of the latter with the Mandatory. Internationally it is the Mandatory—and the Mandatory alone—who is responsible for the establishment of the Jewish national home. The fact that the Jewish agency has the right to petition the League or that it may forward memoranda to the League does not alter the position, as such communications can be submitted by any interested body or individual within Palestine or without.

The second question concerns the competence of the Jewish agency in its advisory capacity. In virtue of the above-quoted provision of Article 4 of the mandate, it extends to 'such economic, social and *other* matters as may affect the establishment of the Jewish national home and the interest of the Jewish population in Palestine.' It has, therefore, only to be established that a given matter before the Mandatory belongs to the category of those which may 'affect the establishment of the Jewish national home,' in order to entitle the Jewish agency to act in its advisory capacity. Divergencies of opinion, however, may arise on the question whether the matter itself does or does not affect the national home, as may be seen from the following instances :

(a) At the end of the administrative period for which the first High Commissioner for Palestine was appointed, it was asked whether the above general formula regarding the advisory capacity of the Jewish agency would justify the mandatory Government in considering itself to be under obligation to consult the Jewish agency on the choice of the new High Commissioner. Those who answered the question in the affirmative based their view on the extensive character of the formula, the appointment of a High Commissioner, who is to be responsible for the carrying out of the national home policy, being in their opinion a matter which may affect the establishment of the national home. On the other hand it may be said—and this appears to have been the point of view of the British Government—that the High Commissioner, whatever his personal views or attitude, is no more than an agent of the Home Government, to whom alone he is directly responsible in carrying out any policy it may have adopted. This indeed has been expressly stated—though on quite a different occasion—in the following terms: ‘The High Commissioner and his officers will undoubtedly carry out the policy of His Majesty’s Government, so far as they are constitutionally empowered to do so, but the suggestion that the High Commissioner either has a policy of his own in contradistinction to that of His Majesty’s Government, or that, if this were so, His Majesty’s Government would permit him to carry it out, would be foreign to all the traditions of British administration.’¹ By the very fact of its not having consulted the Jewish agency on the appointment of the new High Commissioner the British Government seems to have endorsed the view that this was not a matter which ‘may affect the establishment of the national home,’ since this policy will have to be carried out by any High Commissioner

¹ *Cmd.* 1700 (1922), p. 9.

so long as the Mandatory is under obligation to do so. It does not mean, therefore, that the Mandatory's intention in adopting this attitude was to place a restrictive interpretation on the above general formula regarding the advisory capacity of the Jewish agency. In his opinion this was altogether outside the scope of the formula in question. As to the provision itself, it has generally been interpreted in a wide sense, as may be seen from the second instance.

- (b) Article 6 of the mandate dealing with the question of immigration provides, *inter alia*, that 'the Administration of Palestine . . . shall facilitate Jewish immigration under suitable conditions and shall encourage, in co-operation with the Jewish agency referred to in Article 4, close settlement by Jews on the land. . . .' As may be seen from this wording, the Jewish agency is mentioned only in connection with the second part of the Mandatory's obligation, namely that affecting the 'close settlement,' thus suggesting that its co-operation need not be sought in matters concerning immigration. Were it not for the general provision embodied in Article 4, such a construction could have rightly been placed upon Article 6 as far as the text goes, although there can be no possible doubt, as has been repeatedly emphasized by the Mandatory, that the question of immigration is of most vital importance to the establishment of the national home. In fact this is a matter in which the Jewish agency has been recognized as having the right to act in an advisory capacity to the fullest extent. This has been placed on record in the correspondence which took place between the Secretary of State for the Colonies and the High Commissioner for Palestine on the proposed formation of an Arab agency.¹ As we shall see, the Arab agency was to be granted 'similar

¹ *Cmd.* 1989 (1923).

privileges' to those of the Jewish agency, and on this ground the proposal states that 'as regards immigration [Article 6 of the mandate] the Arab agency will have the right to be consulted as to the means of ensuring that the rights and position of other [*i.e.* non-Jewish] sections of the population are not prejudiced.'¹

Further, it is expressly contemplated that the Arab agency should act 'in conjunction with the Jewish agency.'² Although no difficulty of interpretation or application has as yet arisen with regard to Article 6, it seems necessary to point out that so much has been definitely established in spite of the defective wording of the Article. This may be considered as a result of the wider construction placed by the Mandatory upon the provision of the mandate affecting the advisory capacity of the Jewish agency.

The Proposed Formation of an Arab Agency.—The reason which prompted the Mandatory to propose the formation of an Arab agency was a purely political one. This was to be 'a great concession to Arab sentiment' made with a view to putting an end to 'the agitation, whether in Palestine or outside, which has been the fruitful source of so much trouble, expense and even bloodshed in the past.'³ The proposal was the last of a series of three—the first two being, as will be seen, the establishment of a Legislative Council and the reconstruction of the Advisory Council—having the same object in view, namely, the securing of Arab co-operation in the administration of Palestine on the basis of the principles embodied in the mandate. All three were rejected by the Arabs on the ground that they fell short of their demands and implied their 'recognition' of the Jewish national home. While, however, a purely constitutional issue was involved in the case of the first two

¹ *Ibid.*, p. 5.

² *Ibid.*, p. 6.

³ *Ibid.*

proposals—in so far, of course, as this can be said of issues which are to be submitted to international supervision—some doubts at least may be expressed as to the nature of the proposal regarding the formation of an Arab agency. It was, indeed, contemplated that this body should ‘occupy a position exactly analogous to that accorded to the Jewish agency under Article 4 of the mandate,’¹ and it may be asked whether the Mandatory’s act did not amount to a proposed modification of the terms of the mandate, which contain no reference to an Arab agency and consequently seem to countenance the belief that the granting of an agency to the Jews was intended to be an exclusive privilege. If such modification was implied in the proposal, was the Mandatory justified in not having submitted the matter to the Council of the League of Nations in accordance with Article 27 of the mandate? The course chosen by the Mandatory may have been the more expedient, and politically perhaps the more desirable, but it may be asked whether it was in conformity with the mandate.

Before any attempt can be made to answer this question a few remarks must be submitted on the nature of the proposal itself. Although what was offered was an Arab agency with ‘similar privileges’ to those of the Jewish agency, there can be little doubt that the contemplated equality between the two agencies was only of constitutional rights and not of international status, if any. While the proposed Arab agency was to be a local body, representing the Arab population in Palestine (in so far, of course, as this can be said of a body whose members were to be appointed by the High Commissioner only ‘in consultation with the local leaders’),² the Jewish agency is to represent not merely the Jewish population in Palestine, but above all, the

¹ *Cmd.* 1989 (1923), p. 5.

² *Ibid.*, p. 6.

Jewish people as a whole in its connection with Palestine. The Jewish agency is indeed the direct result, not of a local constitutional privilege to a section of the population in Palestine, but of the international recognition of the Jewish national home.

The following are the main consequences of the inherent difference between the Jewish agency as provided for in the mandate and the Arab agency as contemplated in the Mandatory's proposal :

1. There can be no counterpart, in favour of the Arab agency, to the provision embodied in Article 4, paragraph 2, regarding the steps to be taken by the Jewish agency 'to secure the co-operation of all Jews who are willing to assist in the establishment of the Jewish national home.' The Arabs outside Palestine not having been recognized as having any 'connection' with Palestine—except for religious purposes—there can be no ground for granting corresponding attributions to the Arab agency. The proposal of the British Government contains, indeed, no reference whatever to this particular point.
2. The proposed attributions of the Arab agency corresponding to those of the Jewish agency under Article 6 of the mandate [immigration and close settlement on the land] were to be constituted by the right of the Arab agency 'to be consulted as to the means of ensuring that the rights and position of other [*i.e.* non-Jewish] sections of the population are not prejudiced.'¹ There has never been, and indeed could not be, any question of facilitating Arab immigration into Palestine and of co-operating with the proposed Arab agency in some scheme of Arab settlement on the land, as in the case of the Jewish agency. In other words : If the attributions of the Jewish agency are based on the first part of what is known as the Balfour Declaration, those of the Arab agency were to give effect to its second

¹ *Ibid.*, p. 5.

part—which is not the same thing, although implying the same guarantee.

3. The contemplated status of the Arab agency, as opposed to that of the Jewish agency, is clearly indicated by the intention of the Mandatory that 'the new arrangements will be in the nature of a provisional settlement only, and will be subject to review at such time as a fully representative Legislative Council shall have come into existence in Palestine.'¹ The existence and status of the Jewish agency, as recognized in the mandate, can in no way be affected by measures of merely constitutional character such as those providing for the establishment of a Legislative Council in Palestine. While the Jewish agency, therefore, is of a permanent nature, in so far as this can be said of the mandate itself, the proposed Arab agency was intended to be no more than a provisional institution pending the establishment of representative government in Palestine.

For the above reasons the proposal of the Mandatory contemplating the establishment of an Arab agency in Palestine seems to have been in no way contrary either to the letter or to the spirit of the mandate. The whole matter was mainly one of construction, and there can be little doubt that the proposal, as interpreted by the Mandatory himself, does not justify the assertion that it amounted to a tentative revision of the mandate. It was merely intended to give effect and additional guarantee to the various provisions of the mandate safeguarding the rights and interests of the Arab population in Palestine. As such, the proposal would have certainly been approved by the Council of the League when laid before it, together with all the local measures, constitutional or other, which the Mandatory is to submit every year to the League of Nations.

¹ *Cmd.* 1989 (1923), p. 6.

2. IMMIGRATION AND SETTLEMENT ON THE LAND

In virtue of Article 6 of the mandate

‘the Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage in co-operation with the Jewish agency referred to in Article 4, close settlement by Jews on the land, including State lands and waste lands not required for public purposes.’

The text of this Article seems to indicate that, in the eyes of the authors of the mandate, the policies of immigration and settlement on the land are closely connected with each other and that the latter is to be the direct and immediate consequence of the former. The importance attached to these questions by the Mandatory himself may be gathered from the following quotation :

‘The immigration of Jews and their close settlement upon the land, including State and waste lands not required for public purposes, are integral and indispensable factors in the execution of the charge laid upon the Mandatory of establishing in Palestine a national home for the Jewish people.’¹

The obligations assumed by the Mandatory in virtue of the above Article 6 will be dealt with under the following headings :

Immigration.

Land Policy.

IMMIGRATION

From the wording of the Article it may be seen that the obligation assumed by the Mandatory with regard to immigration is twofold. ‘On the one hand,’ as has been stated by the British Government, ‘if a national

¹ *Cmd.* 1708 (1922), p. 4.

home for the Jewish people is to be established in Palestine, there must be reasonable facilities for the admission of Jewish settlers; on the other, the proper regulation of immigration, and its strict correlation to the economic capacity of the country to absorb new inhabitants, are matters of vital concern to the people of Palestine as a whole.'¹ The proposed Constitution for Palestine (Order in Council, 1922) provided for a special treatment of the question of immigration, with a view to reconciling the two parts of the Mandatory's obligation. On the one hand it was intended to reserve all matters of immigration from the competence of the proposed Legislative Council, as without such reservation it would hardly be possible for the Mandatory freely to carry out the immigration policy for which he is held responsible in the mandate. On the other hand, however, it was proposed to set up 'some regular machinery by which the interests of the existing population of Palestine should be represented, without the infusion of any official element.'² For this object there was to be established a sort of immigration board 'representative of Palestinians of all classes,'³ or a 'standing committee of elected members of the Legislative Council.'⁴ Article 84 of the Palestine Order in Council provided that

'the High Commissioner shall confer upon all matters relating to the regulation of immigration with a Committee consisting of not less than one-half of the unofficial members of the Legislative Council,⁵ and provision shall be made by Order in Council for investing the said Committee with all such powers and authorities and otherwise for the constitution and conduct of the business of the said Committee, as may be necessary to carry this Article into effect.'

¹ *Cmd.* 1989 (1923), p. 5.

² *Cmd.* 1700 (1922), p. 7.

³ *Ibid.*

⁴ *Cmd.* 1989 (1923), p. 5.

⁵ See *infra*, Government of Palestine, pp. 177-179.

The Committee was thus to act in an advisory capacity to the High Commissioner upon all matters of immigration, and in the event of any difference of opinion the question at issue was to be referred for decision to the Secretary of State (Article 84, paragraph ii).

As, however, the original Palestine Constitution did not come into force, it was subsequently proposed, as we have just seen, to confer upon an Arab agency similar functions to those of the Jewish agency in questions of immigration. This attempt to secure the co-operation of the local inhabitants having equally failed, the High Commissioner was authorized to carry out the immigration policy in Palestine in consultation with the Advisory Council re-established by the Palestine (Amendment) Order in Council, 1923.

Three main periods may be distinguished in the execution of the immigration policy by the Mandatory :

- (i) The first period is the one regulated by the Immigration Ordinance, 1920.
- (ii) The second is the period during which the Regulations of August 1921 were in force.
- (iii) The third begins with the promulgation of the Immigration Ordinance, 1925, and the Regulations made under this Ordinance.

The First Period.—The Act which inaugurated the immigration policy, as provided for in the then draft mandate for Palestine, was the Immigration Ordinance enacted by the High Commissioner in August 1920,¹ before the formation of the Advisory Council. This Ordinance may be considered as having given a wide scope to immigration, exclusions from entering Palestine having been confined to rather exceptional cases, such as those of lunatics, persons suffering from certain serious diseases, and extraditable criminals. From the economic point of view the immigration policy was governed by

¹ O.G., No. 27, Sept. 16, 1920.

the provision embodied in Article 5, paragraph *b* of the Ordinance, stipulating that the prospective immigrant must have in his possession, or be in a position to obtain, the means of supporting himself and any dependants who desired to enter Palestine with him. Great latitude of interpretation and application seems to have been left in the hands of the competent authorities, since no definite construction by Regulation or Order was placed upon the above provision. There was no stipulation that the prospects of employment, with regard to which the prospective immigrant had to satisfy the immigration authorities, had to be either guaranteed or of any definite character; possibilities of employment in the country as a whole could be considered as sufficient under the Ordinance. True, discretionary power was given to the High Commissioner to refuse permission to enter Palestine without having to state any grounds or reason for his refusal; but this power was seldom, if at all, exercised; and even had it been so, its influence on the general situation could not have been considerable, since the provision in question was meant only to apply in individual and rather exceptional cases.

The real 'safety valve' left by the Ordinance in the hands of the Palestine Government to enable it to check immigration when necessity arose—mainly on economic grounds—turned out to be the provision embodied in Article 5, paragraph *g*, which made the entry into Palestine subject to the fulfilment of 'such other requirements as may be prescribed by any general or special Instructions of the Director of Immigration.' Moreover, Article 11 of the Ordinance provided that 'the Director of Immigration may with the approval of the High Commissioner issue from time to time any Orders or Regulations for the better control of immigration into Palestine.' These Instructions or Regulations must have originally been intended to be of purely administrative

or technical character, but those which were subsequently issued amounted in fact to the establishment of a new *régime* which remained in force—with some reservations introduced in practice—during four consecutive years.

The Second Period.—A mere 'Public Notice'¹ issued on behalf of the Director of the Immigration and Travel Department brought about this new *régime*. From the constitutional point of view—and with regard to Palestine as it then was it may be said that '*l'absence de constitution est aussi une constitution*'—it is hardly defensible that 'instructions' issued by a subordinate authority should be allowed to supersede an Ordinance—for it amounted to that—under which they were supposed to be made. On the other hand, in a country where both the Legislature and the Executive are in the hands of a High Commissioner, it matters really very little whether the laws are promulgated directly by the latter, in the form of Ordinances and Orders, or by one of his subordinates acting upon his instructions, in the shape of Regulations or Public Notices.

There was, however, a political reason for adopting this procedure. The new Regulations were issued after the temporary suspension of all immigration, following upon, and as a consequence of, the disturbances of May 1921. To enact a new Immigration Ordinance would have probably meant to act against the opinion of the Advisory Council which had been set up in the meantime and had to be consulted. Indeed, both the Arab majority represented on the Council and the Jewish minority could hardly have been satisfied with the new Regulations which the Government was about to enact: the former, because of the immigration they restored, and the latter, because of the new restrictions they contained.

¹ Entitled 'Admission of Immigrants to Palestine' (*O.G.*, No. 49, Aug. 15, 1921).

It was therefore presumably found more expedient to have the new Regulations issued in the form of a simple 'Public Notice' on behalf of the Director of Immigration, acting in pursuance of the above-quoted provisions of the Immigration Ordinance, 1920.

The 'Public Notice,' dated August 1, 1921, begins by saying that 'new Regulations have now been drawn up governing the admission of immigrants into Palestine,' and provides for five definite categories of prospective immigrants beside those of travellers 'who do not intend to remain in Palestine more than three months' and of 'returning residents.'

The categories of immigrants allowed to enter Palestine under the new Regulations were as follows :

- (i) Persons of independent means who intend to take up permanent residence in Palestine.
- (ii) Members of professions who intend to follow their calling.
- (iii) Wives, children and other persons wholly dependent on residents in Palestine.
- (iv) Persons who have a definite prospect of employment with specified employers or enterprises.
- (v) Persons of religious occupation, including the class of Jews who have come to Palestine in recent years from religious motives and who can show that they have means of maintenance there.

The question arose whether the new Regulations, as compared with the Ordinance of 1920, merely sanctioned certain necessary restrictions upon immigration or whether they amounted to a new departure. The underlying principle of the Ordinance, as we have seen, was that Palestine was to be kept open for immigration save in a few exceptional cases ; the text of the new Regulations, however, was regarded by some as indicating that this principle had been reversed, and that Palestine was closed to immigrants except in the case of their falling

under one or other of the above categories. Thus, it was said, what had been the rule under the Ordinance of 1920 became the exception under the Regulations of 1921. It is true that political considerations were largely responsible for the enactment of the new Regulations. It is equally true that such considerations alone were not viewed by the mandate (then only in draft form) as a sufficient justification for restricting—let alone prohibiting—immigration. Indeed, Article 6 of the mandate, as we have seen, makes the obligation of the Mandatory to facilitate Jewish immigration subject only to ‘ensuring that the rights and position of other sections of the population are not prejudiced’—which has always been interpreted as referring to the economic position. But there seems to be nothing to prevent the Mandatory from taking into consideration, as a contributory element, such political or other circumstances as may render advisable certain restrictions upon immigration, provided that such restrictions are primarily considered indispensable on economic grounds. According to the Interim Report on the Civil Administration of Palestine, this was the case in 1921 when ‘it was becoming increasingly evident that the flow of immigrants was greater than the country was able to absorb.’¹

The assertion that the immigration restrictions of 1921 were due—though not exclusively—to the economic conditions obtaining at the time in Palestine is corroborated by the fact that subsequently immigration figures considerably increased—indeed, far beyond those of 1920—with the improvement of the economic position. Although the Regulations of 1921 remained in force until 1925, the methods which were gradually adopted for putting them into practice, and the increasingly wider interpretation which they were given by the competent

¹ *Cmd. 1499* (1921), p. 18.

authorities, made them an instrument for meeting the new conditions more adequately than was at first thought possible.

The Third Period. — The Immigration Ordinance, 1925,¹ is largely the outcome of the previous measures which had governed the immigration policy of the Mandatory, with such modifications as were found necessary as the result of experience and in order to meet the new conditions. It is the first legislative measure concerning immigration which was promulgated after the ratification and the coming into force of the mandate. The Regulations issued under, and simultaneously with, the Ordinance directly refer to the provisions of the mandate regarding the rôle of the Jewish agency in matters of immigration. Previously, it is true, the Jewish agency had been allowed to act as an advisory body to the Palestine Government with regard to the above matters also, although both the Ordinance of 1920 and the Public Notice of 1921 were altogether silent about it. However, in a country not very familiar with unwritten laws or an unwritten Constitution, the fact that the Jewish agency was not so much as mentioned in the above Acts was largely taken as meaning that the position of that body, as far as immigration was concerned, was merely a *de facto* one, tolerated rather than legally recognized and sanctioned.

The underlying principle of the new Ordinance is to the effect that Palestine is to be open to immigration, subject to such control as the interests of the country may require. This is equally the fundamental principle of the above Article 6 of the mandate. But doubts have been expressed—and, as it would seem, not without foundation—as to whether this is true with regard to certain provisions of the new Regulations. The wording

¹ O.G., No. 141, June 15, 1925.

of the following provision in particular may give rise to criticism : ' No foreigner shall have an absolute right to enter Palestine without the permission of the Chief Immigration Officer or of an Immigration Officer at the place of his entry into Palestine ' (Article 1). While there can be no doubt that the controlling of immigration is not only the right but essentially the duty of the Mandatory, it may be asked whether the above provision does not tend to assimilate the legal status of Jewish immigrants to Palestine to that of all other immigrants to foreign countries. Indeed, exception has been taken to the Article in question on the ground of its being inconsistent with such provisions of the mandate as admittedly imply that Jews—in their capacity as such and not as nationals of various States—wishing to go to Palestine are not to be considered as immigrants entering a foreign country where at most they are merely tolerated. There can indeed be no possible doubt that the mandate has created for Jews as such a right to immigrate into Palestine under suitable conditions, these conditions being based on facts which cannot affect the right created by the law as it now stands. On the other hand, it has been said that, while a right to immigrate into Palestine has been granted to the Jewish people as a whole, it does not necessarily mean that any individual Jew has an absolute right to enter Palestine. For the purposes of the Immigration Ordinances and Regulations, ' foreigner '—to use the terms of the Ordinance itself—' means a person who is not a Palestinian citizen,' and it can hardly be reasonably claimed that prospective immigrants—even if they enjoy the special status accorded in the mandate to Jews—should be considered as Palestinian citizens for the purpose of entering the country. In spite of the wording of the above provision—which many hold to be obviously defective—it may still be said that the principle, as adopted by the Man-

datory, does not interfere with the right of Jews to enter Palestine ; it involves no more than such administrative and police measures as will enable the Mandatory to carry out his immigration policy without disturbing effects either to the country as a whole or to the Jewish national home itself. The principle of control is embodied in the provision stipulating that

‘no immigrant shall enter Palestine unless he is in possession of an immigration certificate granted by the Chief Immigration Officer, or is permitted to accompany the holder of an immigration certificate to whom he is related and upon whom he is dependent.’¹

Paragraph 2 of the same Article enumerates four categories of persons who alone may be granted immigration certificates.

The A category, consisting of ‘persons of independent means,’ is similar to the first category under the Regulations of 1921. The new provision is given, however, a wider interpretation, and greater facilities are granted under it to prospective immigrants from the point of view of both the amount and the kind of means required.

The B category includes any person who ‘is qualified in a profession or intends to engage in commerce or agriculture,’ and is substituted for the second category of the previous Regulations concerning ‘members of professions who intend to follow their calling.’ The addition in the new Regulations of persons who propose to engage in commerce or agriculture may prove of great importance to the policy of agricultural colonization pursued by the Jewish agency in co-operation with the Mandatory.

To the C category belong ‘persons who have a definite prospect of employment in Palestine.’ This

¹ Regulations made under the Immigration Ordinance, 1926, Art. 4, para. 1.

formula has been substituted for the provision of the 1921 Regulations requiring that the definite prospect of employment should be 'with specified employers or enterprises.' The new provision, without affecting the definite character of the employment required, allows for more possibility of its being found and therefore constitutes a more suitable means for encouraging immigration.

The D category includes 'dependants of permanent residents or of immigrants belonging to the categories A, B and C,' and corresponds to the third category of the 1921 Regulations. The meaning of 'dependant' under the Immigration Ordinance and Regulations, 1925, is defined in Article 2 of the Ordinance itself and includes relatives of five sub-categories 'wholly and directly dependent for maintenance and support upon an immigrant or a permanent resident.'

It is mainly in connection with the above C category that the advisory capacity accorded to the Jewish agency in Article 6 of the mandate is expressly referred to in the Immigration Ordinance, although there seems to be little doubt that the Jewish agency is entitled to exercise its advisory functions in all matters affecting immigration. The provisions in question are the following :

'It shall be lawful for the Palestine Zionist Executive to notify the Chief Immigration Officer . . . that there is a reasonable prospect of employing a number of persons, either named or unnamed, in Palestine, and to make an application for permission for their entry into Palestine, but every such application shall be accompanied by a guarantee to maintain the person or persons in respect of whom it is made for a period of not less than one year.'¹

'In order to determine the number of persons of

¹ *Ibid.*, Art. 7, para. 4.

category C who may be admitted to Palestine, Labour Schedules shall be prepared from time to time by the Chief Immigration Officer after considering any proposals made in that regard by the Palestine Zionist Executive. One such Labour Schedule shall be prepared in respect of each successive period of six calendar months ending alternately on the 30th of September and the 31st of March, laying down the maximum number of persons belonging to the various trades, industries and callings who may be granted immigration certificates under category C during the period covered by the said Schedule.’¹

These are the main provisions which govern the relations of the Mandatory and the Jewish agency in matters of immigration. As we have seen, they are based on Article 6 of the mandate and seem to have placed a fairly wide construction upon the latter, since the advisory capacity of the Jewish agency amounts sometimes to actual co-operation with the Mandatory. Such is, for instance, the case under Article 8, paragraph 3 of the Regulations, providing that ‘the immigration certificates shall be transmitted to the Palestine Zionist Executive for distribution by them.’

In conclusion it may be said that, although at certain periods—and particularly in 1921, as we have seen—political considerations seem to have played a not unimportant part in shaping the immigration policy of the Mandatory, the main principle upon which this policy now rests is that ‘immigration to Palestine must be regulated by the economic capacity of the country to absorb new settlers.’² It is in view of the decrease of this ‘economic capacity’ that ‘a considerable decline in the volume of immigration and a simultaneous increase in the number of emigrants were,’ according to

¹ Regulations made under the Immigration Ordinance, 1925, Art. 8, para. 1.

² Report on the Administration of Palestine for 1925, *Colonial*, No. 20 (1926), p. 70.

the Report on the Administration of Palestine during 1926, 'outstanding features of the year.'¹ 'The sharp depression in trade and other commercial enterprise,' of which another part of the Report speaks, seems to have largely persisted; nevertheless it is added that 'there is possibly some danger that unduly pessimistic inferences may be made from the present situation in its relation to the establishment of the Jewish national home.'²

LAND POLICY

In addition to the above-quoted provision of Article 6 of the mandate with regard to 'close settlement by Jews on the land,' Article 11 provides that the Administration of Palestine 'shall introduce a land system appropriate to the needs of the country, having regard, among other things, to the desirability of promoting the close settlement and intensive cultivation of the land.'

The mandate for Palestine is the only one of the A category to provide for matters such as land system and settlement. Special attention has been paid to this question in the mandates of the B and C categories, namely for the ex-German colonial possessions, as, prior to their having been placed under the mandatory *régime*, these territories did not always enjoy such a land system as would favour the interests of the native inhabitants. The land policy of various Powers has been largely dominated by the interests of the 'white settlers,' mainly their own nationals, and one of the main tasks of the mandates system was to render impossible the repetition or continuation of such abuses as may have been committed under the old colonial *régime*, at least within the boundaries of the territories placed under mandates. With regard, however, to the

¹ *Colonial*, No. 26 (1927), p. 58.

² *Ibid.*, p. 7.

A category of mandates, the situation was altogether different, both because of the fact that the territories concerned did not, prior to the introduction of the mandates system, form part of any colonial domain, and on account of the more advanced stage of development of their inhabitants. No need was therefore felt, when the mandates were being drawn up, to provide for special measures safeguarding the land interests of the native population.

From this point of view—as from many others—the mandate for Palestine stands alone. Owing to the national home policy, Palestine has become a territory of future colonization—with the difference, however, that it is not to be colonized with the nationals of the administering Power or in their more or less exclusive interest. Under such conditions, abuses of discrimination are on the face of things much less likely to occur than in colonial possessions, where the Administration may find itself in the difficult position of judge and party at the same time. In Palestine the Mandatory is to see that the two elements of the population under his trust—the local inhabitants in whose actual possession the land is now to be found and the Jewish immigrants who are to settle on the land—are given equal guarantee and protection by the *régime* in force. Indeed, the obligation assumed by the Mandatory to encourage close settlement by Jews on the land, while constituting the foundation of Jewish claims to land, cannot in the slightest affect the rights of the native population. The Mandatory was to co-ordinate in his land legislation these two sets of interests, which are far from being contrary to one another and certainly are not necessarily inconsistent, as they were sometimes said to be. The legislative measures to be taken by the Mandatory thus have to provide for a double guarantee: one to the Jews who are to acquire new land in order to be able to establish

in Palestine their national home, and one to ' the other sections of the population ' who are in present possession of the land. This, naturally, excludes any prohibition of land transactions on the one hand, and any expropriation of land, unless required for public purposes, on the other.

These are the fundamental principles laid down by the mandate for the guidance of the Mandatory in elaborating the land system in Palestine. We have seen, however, that besides private land which may become from time to time available for Jewish settlement, the mandate also mentions the categories of State land and waste land, where many of the questions regarding the first do not arise and in connection with which some special points are to be examined. The various obligations assumed by the Mandatory with regard to these categories of land will therefore be separately dealt with in the following two sections :

- I. Obligations of the Mandatory with regard to the *régime* of private land.
- II. Obligations of the Mandatory with regard to State lands and waste lands.

I. *Obligations of the Mandatory with regard to the régime of private land*

Three successive stages may be discerned in the development of the Mandatory's legislative measures in the direction of lessening government interference with transactions in private lands. The first stage, that of complete prohibition of such transactions (November 1918 to October 1920), was merely the result of a war measure enacted and carried out by the military authorities in the occupation of Palestine. In virtue of an Ordinance dated November 18, 1918, ' all dispositions of immovable property, pending the re-establishment

of the Land Registry Offices,' were prohibited. This was obviously a provisional measure, which, however, outlived the military administration owing mainly to the difficulties connected with the re-establishment of the above-mentioned offices and the Land Settlement Court which was to 'adjudicate on all titles.' The military authorities were not only free to prohibit land transactions—as at that time both the mandate and the national home policy were still in the early stages of their formation—but it was clearly their duty to do so with a view to safeguarding the rights and titles of the owners against illegal claims rendered possible by the removal or suppression of the Land Registers by the retiring Turkish forces. Whether it was necessary for the position to remain unaltered for about two years is another question.

The next legislative step was effected in September 1920, after the civil authorities had taken the place of the military, but, legally speaking, still during the military occupation of Palestine, which was to last as long as a valid peace treaty had not been concluded with Turkey. This is what accounts, to some extent, for the fact that the Transfer of Land Ordinance, 1920,¹ is partly based on Ottoman law. The main principle laid down in this Ordinance is embodied in Article 4 to the effect that 'any person wishing to make a disposition² of immovable property must first obtain the written consent of the Administration,' and the following categories of conditions have been attached to the granting of such consent :

1. *Conditions connected with the person acquiring the land.*—The Governor of the district in which the

¹ O.G., No. 28, Oct. 1, 1920.

² The term 'disposition,' for the purposes of the Ordinance, means 'a sale, mortgage, gift, dedication of

will of every description, and any other disposition of immovable property except a devise by will or a lease for a term not exceeding three years.'

land to be transferred is situated, who is the competent authority to give the necessary consent, has to be satisfied that the person acquiring the property (a) is 'resident in Palestine,' and (b) 'intends himself to cultivate or develop the land immediately' (Article 6).

2. *Conditions connected with the person disposing of the land.*—It must be proved to the satisfaction of the competent authority that 'in the case of agricultural land, either the person transferring the property, if he is in possession, or the tenant in occupation, if the property is leased, will retain sufficient land in the district or elsewhere for the maintenance of himself and his family' (*ibid.*).

3. *Conditions connected with the land itself.*—(a) It must not exceed 'either in value £E3000 or in area 300 dunams¹ in the case of agricultural land and 30 dunams² in the case of urban land' (*ibid.*); (b) it cannot be the subject of any new disposition 'if the land has been sold or otherwise disposed of within a year and the intending transferor fails to give satisfactory reason for wishing again to dispose of it' (Article 7).

The main objects of these conditions are stated in the Note on the Land Transfer Ordinance,³ issued by the Administration of Palestine, in the following terms:

'... The restrictions on transfers have been introduced purely in the interests of the people. The principal reason for requiring the consent of the Administration is to prevent speculation in, and which will cause an excessive rise of, prices and prevent development. Transactions will only be allowed if the person acquiring the land will cultivate it, supposing it is agricultural land, or develop it immediately, supposing it is urban land.

'Another object of the control of the Administration is to protect the small farmer in his holding. If he is the owner of land he will be unable to sell such part as is

¹ 75 acres.

² 7.5 acres.

³ O.G., No. 28, Oct. 1, 1920.

necessary for the maintenance of himself and his family ; and if he is the tenant his landlord will be unable to sell without leaving sufficient land for him. . . .’

When one or more of the above conditions are not fulfilled, as for instance when the land to be acquired exceeds either in value or in area the above-mentioned limits, or when the person intending to acquire the land is not resident in Palestine, the only competent authority to grant the necessary consent of the Administration is the High Commissioner himself (Article 8). As the above Note states, therefore, ‘ the High Commissioner can consent to land transactions without any restriction, provided that he is satisfied that they will be for the public benefit.’

This last provision of Article 8, coupled with those governing the right of companies and associations ‘ to acquire land in their own name and to acquire larger areas than can be consented to by the Governor ’ (such cases have, therefore, to come before the High Commissioner himself), was largely intended to serve the interests of the close settlement policy, as provided for in Articles 6 and 11 of the mandate. The Jewish agency, indeed, may have under its control—as in fact it has—or may be assisted by companies and associations with this special object to acquire large areas of land with a view to distribution among individual settlers, either in private property or under lease for a number of years. In such cases the consent of the High Commissioner will not be withheld if he is satisfied that the transaction is for the benefit of the national home and the country as a whole. Besides, in virtue of Article 8, paragraph 2,

‘ the High Commissioner may refer the application for any such disposition [outside the competence of the District Governor] to any Commission which may be appointed by him to report upon the closer settlement of the land.’

As may be seen from the above-quoted provisions, the

Transfer of Land Ordinance, 1920, was based on the principle of government control with regard to all land transactions. In some respects it may be said that the government control in Palestine was even stricter than in mandated territories of the B category, whose natives are regarded as infants under the tutelage of the Administration.¹ It seems, however, that the native inhabitants of Palestine, owing to their higher degree of development, are hardly in need of such wide measure of government protection against prospective purchasers of land, the more so as the land is largely held there by big estate owners who can properly defend their own interests, as in fact they do. At the same time it has to be pointed out that owing to the vital importance which land questions have acquired in Palestine as a consequence of the national home policy, it was clearly the duty of the Administration to regulate the land system so as to prevent all possible abuses, such as exercise of pressure, speculative dealings, etc. It seems, however, that general supervision by legislation of national scope and application would have been more suitable to the special conditions in Palestine than administrative control in individual cases. It became gradually evident that, generally speaking, government control amounted to interference with the normal course of transactions in land, and it was felt that a larger amount both of freedom and responsibility should be granted to the parties themselves. This was the main object, as it seems, of the Transfer of Land (Amendment) Ordinance No. 2, 1921,² which inaugurated the third and last stage in the development of the land policy pursued by the Palestine Government.

The 1921 Ordinance is to be read in conjunction with

¹ See on this point the French Report on the Administration of the Cameroons for 1922-23, p.³ 39, quoted by J. Stoyanovsky in *La*

Théorie Générale des Mandats Internationaux, p. 210.

² *O.G.*, No. 57, Dec. 15, 1921.

the Transfer of Land Ordinance, 1920 (Article 3 of the new Ordinance), and is equally based on the principle that the consent of the Administration must be obtained to all land transactions. The character of this consent, however, has been wholly modified in the amending Ordinance, since it is no longer dependent upon any such conditions as those connected with the area or the value of the land to be transferred or the residence and intention of the prospective purchaser. All such conditions, provided for in Articles 6 and 7 of the 1920 Ordinance, were abolished by Article 1 of the amending Ordinance, which has also substituted the Director of Land Registries for the Governor of the District as having authority to grant the necessary consent. This substitution should mean that legal and technical considerations are intended to take the place of political and administrative. Thus, Article 2 provides that 'the consent of the Administration to a disposition shall be given by the Director of Land Registries or the Registrar of the district or sub-district, who shall be satisfied only that the transferor has a title.' All that is required, therefore, is a mere declaration of ownership by the prospective transferor. The only condition of more than purely technical importance which has been retained in the new Ordinance is that 'in the case of agricultural land which is leased' the above competent authority 'shall also be satisfied that the tenant in occupation will retain sufficient land in the district or elsewhere for the maintenance of himself and his family' (Article 2, *in fine*).

These are the main provisions which the Ordinance contains in order to give effect to the obligations assumed by the Mandatory in virtue of Articles 6 and 11 of the mandate. It has been maintained—and still is, in some quarters—that the above legislative measures can hardly be described as adequately encouraging close settlement on the land.

There is one point, it is urged, in connection with the land policy in Palestine which requires special attention, namely the fact that the land is largely divided into big estates owned by a limited number of landlords. The position of these landlords has generally been encouraged by the Turkish authorities, and this is what largely explains the persistence of quasi-feudal land conditions in Palestine—a state of affairs which is mainly responsible for the low degree of development of the Palestinian soil. The big landlords, many of whom are absentees and only few of whom invest any appreciable capital in their estates, have through centuries neglected the land, as it was largely left in the hands of the local fellaheen (peasants) with practically no means to cultivate or develop the land and little interest in doing so.

It is maintained that it is the duty of the Mandatory to take the necessary measures for altering this state of affairs as being inconsistent not only with his obligation explicitly undertaken to encourage close settlement on the land in Palestine, but also with the interests and needs of the country as a whole. On the other hand, it may be said that in taking such measures the Mandatory might have to act contrary to the rights and interests of the native population—*i.e.* one part of it, the big estate-owners, which it is equally his duty to safeguard. To admit this, however, would largely mean to bar the way to progress in Palestine and to place the particular interests of a fairly limited number of land-owners above those of the country as a whole. Were such measures as acquiring and parcelling out of big estates in the sole interest of the national home and detrimental to the country as a whole, there can be little doubt that they would be contrary not only to the spirit of the mandate but even to its letter, which explicitly makes the 'close settlement by Jews on the land' subject to 'ensuring that the rights and position of

other sections of the population are not prejudiced.' The conflict of interests, if any, is really not between the national home and Palestine, but between a comparatively small class of individuals on the one hand and both the national home and Palestine as a whole on the other.

There is, of course, not the slightest suggestion of any sort of confiscation of land in favour of either the present tenants or the new settlers. It is proposed that the measures to be taken should be drawn up so as to discourage the possession of estates exceeding a certain area or value; fiscal measures or the gradual introduction of obligatory cultivation of the land (under the Ottoman law—which was seldom enforced—uncultivated lands were liable to reversion to the State) may greatly help to achieve this object. It has been mentioned above that in virtue of a special provision of the Transfer of Land Ordinance, 1920, the area or value of newly acquired lands has been limited; some measure on similar lines could equally be applied to old property. It is clear from this Ordinance as well as from the amending Ordinance of 1921 that the clauses of the mandate safeguarding the rights and interests of the inhabitants have been interpreted mainly in favour of the small owner or tenant, who has, even sometimes against his own will, to retain sufficient land for the maintenance of himself and his family. One of the main objects of the mandates system was to reform the land policies which were previously in operation; as regards Palestine, the addition of the national home policy only strengthens the case for land reform, giving as it does a new object to such reform. It is either for private motives or for political—and, it may be added, illegitimate—ends that the national home policy seems to have been used to hinder land reform on the lines advocated.

II. *Obligations of the Mandatory with regard to State lands and waste lands*

A great deal of uncertainty prevailed during the early stages of the application of the mandates system on the question of ownership of State lands in mandated territories. Controversy mainly turned on divergent interpretations given to certain provisions of the Treaty of Versailles,¹ and was therefore confined to the ex-German colonial possessions under the B and C categories of mandates. Expressions such as 'private domain of the French State' or 'Crown lands' have been used in legislative Acts in order to define and qualify the status of State lands in Togo and the Cameroons (under French mandate) and Samoa (under mandate of New Zealand) respectively. This uncertainty, however, has been removed by the official construction placed upon these Acts both by the Mandatories themselves and the competent authorities of the League of Nations. It has been definitely established that no legal relation of ownership exists between the Mandatory States and the 'State lands' or the 'Crown lands'—as the case may be—situated in the mandated territories, but merely an administrative relation of control and supervision.² At the most it is said that—taking the English conception of trust—the Mandatory is the trustee of the above lands, the only beneficiary being the local population.

This principle has from the outset been applied to the State lands situated in the territories under A mandate. In these territories, therefore, the term 'State lands' has always been understood to mean lands the ownership of which was formerly vested either in the Turkish sovereign or in the Turkish State,³ and which,

¹ In particular Art. 257.

² *P.M.C.*, Minutes of 3rd Session, p. 225 (Annexes). With regard to the whole question, see J. Stoyanovsky, *op. cit.*, pp. 211-215.

³ For the origin and nature of State or Miri lands see *The Law of State Lands in Palestine*, by Mr. Justice Tute, in *J.C.L.*, vol. ix. part iv. (Nov. 1927), pp. 165-182.

upon the introduction of the mandates system, have passed to the 'States' placed under mandate (the Treaty of Sèvres, indeed, refers to the territories in question as 'States'). These lands have thus become 'public lands' administered by the Government exercising authority in the territories where they are situated. According to the Palestine Order in Council, 1922,

'Public lands means all lands in Palestine which are subject to the control of the Government of Palestine by virtue of treaty, convention, agreement or succession, and all lands which are or shall be acquired for the public service or otherwise' (Article 2).

As far as Palestine is concerned, therefore, the Mandatory is the trustee of the State lands or 'Public lands,' the beneficiary being the country as a whole, subject to the provisions of Article 6 of the mandate.

According to this Article, as we have seen, 'State lands and waste lands not required for public purposes' are included in the policy of 'close settlement by Jews on the lands.' The Mandatory, in his capacity of trustee for the State lands in Palestine, is therefore under a twofold obligation: one, towards the country as a whole, to administer these lands in the interest of the latter; and the other, towards the Jewish national home, to encourage close settlement by Jews on such lands. If the Government does not or cannot cultivate or develop directly the State lands in its trust, then it is in the interest of the country that they should be thrown open to cultivation or development by private or collective enterprise. This is what the first obligation seems to imply, while the second points out the direction where such enterprise is to be sought. In virtue of the special provision embodied in Article 6 of the mandate, Jewish settlers seem to have been accorded priority in the acquisition or occupation of State and waste lands,

provided that the rights and position of the other sections of the population are not prejudiced.

The only legislative measures of a general character taken by the government of Palestine with regard to State lands and waste lands are those embodied in the provisions of the Mahlul Land Ordinance, 1920,¹ and the Mewat Land Ordinance, 1921.² The first one deals with State land which by the Turkish Land Code 'reverts to the government on failure of heirs of the holder or on non-cultivation during three years,' having thus become 'Mahlul.' It provides that 'every person who at any time previous to the issue of this Ordinance has taken possession of' such lands should 'inform the Administration within three months of the date of this Ordinance.' With regard to waste lands, the Mewat Land Ordinance, 1921, amending Article 103 of the Ottoman Land Law, contains a similar obligation imposed on 'any person who has already cultivated such waste land without obtaining authorization' to notify the Administration within a period of two months; a title-deed (Kushan) will be granted to such persons on application. On the other hand, it is provided that 'any person who without obtaining the consent of the Administration breaks up or cultivates any waste land shall obtain no right to a title-deed for such land and further will be liable to be prosecuted for trespass.'

The above Ordinances, as may be seen from their provisions, were only preliminary measures necessitated by the confused state of affairs in land tenure which prevailed during the post-war period. The ultimate object of the Ordinances in question was to legalize previous occupations or acquisitions of State and waste lands, and at the same time to prevent any rights from being established in future over such lands without authorization. Only after this had been done could the

¹ *O.G.*, No. 31, Nov. 15, 1920.

² *Ibid.*, No. 38, March 1, 1921.

Administration consider the application of the provisions of Article 6 of the mandate with regard to these categories of land. Up to the present time, however, this has not been the case, and these provisions are still in abeyance, with only a few small exceptions. The Memorandum of October 1925 submitted by the Zionist Organization to the League of Nations mentions the only case in which it has yet been found possible to give practical effect to the provisions of Article 6 regarding State and waste lands. 'At the outbreak of the war,' it says,¹ 'the Jewish Colonization Association (now reconstituted as the Palestine Jewish Colonization Association²) had been promised by the Turkish authorities a lease of the Kabbara swamps covering, with the adjacent sand dunes, an area of about 45,000 dunams in the neighbourhood of Caesarea. The Palestine Government has confirmed this pre-war concession, and has now granted the Association a fifty years' lease of the Kabbara lands on terms providing for their reclamation and development.'³ It may be said, however, that in rati-

¹ *P.M.C.*, Minutes of 7th Session, p. 187 (Annexe 9).

² The P.I.C.A., as it is generally called, has been recognized by a special Ordinance enacted in 1924 as having purposes of public utility within Art. 8 of the Companies Ord., 1921 (*O.G.*, No. 111, March 15, 1924).

³ The question of the so-called Kabbara concession was discussed by the Permanent Mandates Commission at its 5th, 7th, 9th, and 11th sessions (*i.e.* all those at which Palestine was on the agenda) in connection with a number of petitions submitted by the Executive Committee of the Palestine Arab Congress. In the opinion of the *rapporteur*, M. Rappard, who dealt most exhaustively with the matter, the case in question 'would seem to be one of those which might not unreasonably be expected to arise as a result of the duty of the mandatory Power to reconcile the two principles laid down in the mandate: on the one hand, to facilitate close settle-

ment of the Jews on the land, and on the other hand, to respect in every way the rights of the native inhabitants of the country' (*P.M.C.*, Report on the Work of the 11th Session, p. 13). As, however, it was alleged that the rights of the inhabitants of at least part of the Kabbara lands were affected, the Commission adopted the conclusion of the *rapporteur* to the effect that it 'sees no valid reason why the petitioners should not bring their grievances to Court' (*ibid.*, p. 14). At the same time it was pointed out that 'even in the event of a Court decision confirming the opinion at present held by the Administration—that the inhabitants represented by the petitioner have no strictly legal rights—the Permanent Mandates Commission has been assured that the mandatory Power will, in accordance with the intention expressed by its representatives on various occasions, see to it that a liberal interpretation is given to the moral rights of the inhabitants' (*ibid.*).

fying this concession the Palestine Administration has no more than given effect to the promise of the Turkish Government, and that it can therefore hardly be considered as falling directly under Article 6 of the mandate. At the seventh session of the Permanent Mandates Commission it was stated that this Article was still inoperative; and without taking exception to this statement, the British accredited representative explained that the delay was largely due to the survey question being rendered more difficult by the fact that many of the Turkish surveys had been destroyed in the course of the war.¹

The main reason, however, may be seen from the following statement made by the Mandatory in a letter of October 19, 1925, to the Secretary General of the League of Nations:

‘Most of the State lands in Palestine are already occupied by tenants under various conditions which, while not amounting to full ownership or even, in most cases, a right to perpetual tenancy, have nevertheless a certain moral and, in many cases, actual legal validity. In these circumstances, they could not be dispossessed for the purpose of making the land available for Jewish settlement without infringing that part of Article 6 of the mandate which lays down that the rights and position of other sections of the population shall not be prejudiced.’²

The quotation speaks for itself, and, subject to what will be said below, all that can be urged upon the Mandatory is to establish the character and extent of the legal right of the State to the lands in question with a view to ascertaining exactly what areas—if any—may be set aside for Jewish settlement without infringing any acquired rights. This seems to have been the point of view of the Permanent Mandates Commission when observing, at the ninth session, that it

¹ *P.M.C.*, Minutes of 7th Session, p. 113.

² *Ibid.*, p. 193 (Annexe 9a).

'trusts that every effort will be made to hasten the survey, the completion of which will be of the utmost importance for the general development of Palestine and in particular for the establishment of the Jewish national home.'¹

A contributory cause of the delay in the application of Article 6 of the mandate is to be found in the different views taken by the Palestine Administration on the one hand, and the Zionist Organization on the other, with regard to the procedure to be followed in this connection. It seems that the Mandatory is inclined to follow in Palestine the customary method adopted in the British colonies relating to land concessions, and to await applications for such concessions from interested bodies or persons. 'This is a matter,' says the above-quoted letter of the British Government to the Secretary General of the League of Nations, 'in which the Palestine Government might reasonably expect that the Zionist Organization would take the initiative.'² On the other hand, it was maintained by the Zionist Organization in its letter to the High Commissioner of May 1, 1926 (forwarded together with the Memorandum submitted to the Permanent Mandates Commission at its ninth session), that it was 'at some disadvantage in doing so, since its information as to the actual limits of the State lands, and the degree to which they are available, is necessarily less complete than that which is in the possession of the Government.'³ This practical reason seems indeed to be a very plausible one, in so far as it does not affect the main question, whether the Palestine Administration is bound, and if so to what extent, to follow a different practice from what seems to be largely the rule in the British colonies. Looked at from the point of

¹ *P.M.C.*, Minutes of 9th Session, p. 217 (Report to the Council of the League).

² *P.M.C.*, Minutes of 7th Session, p. 193.

³ *P.M.C.*, Minutes of 9th Session, pp. 198-199 (Annexe 6).

view of the construction to be placed upon the relevant provision of Article 6 of the mandate, the question depends for its solution upon the interpretation of the Mandatory's duty to 'encourage' Jewish settlement in Palestine. In the eyes of the British Government encouragement would simply mean giving favourable consideration to any practical and definite application by the Zionist Organization, while the latter is inclined to place a more extensive meaning on the term in question, and to consider it to imply a more active attitude on the part of the Palestine Administration. It may be pointed out that support is lent to this view by the fact that in this respect Palestine stands alone, not only as compared with colonial possessions, but also among the mandated territories.

In this connection it should be mentioned that, while under no express obligation to encourage Arab settlement on State lands, the Palestine Administration has concluded an agreement with the cultivators of the Beisan area in regard to the disposition of the Ghor lands, which originally belonged to Abdul Hamid II and passed to the Turkish State in 1908. In virtue of the Beisan Land Agreement of 1921, the cultivators have been recognized as owners of the land respectively held by them in consideration of a moderate transfer price payable in fifteen yearly instalments. The agreement has been criticized on the ground that the Mandatory has exceeded his obligations towards the Arabs as provided for in the mandate, and that this act of the Administration, particularly if coupled with the absence of any similar act in favour of Jewish settlers, is contrary both to the letter and spirit of the mandate. It has, indeed, been admitted by the British accredited representative to the Permanent Mandates Commission that 'in the matter of land grants the balance had so far been in favour of the

Arabs.’¹ But stated in this way, the criticism can hardly be upheld, as those of the Ghor lands, which were occupied by Arab tenants and tribes long before the mandate, were automatically excluded from the close settlement policy in favour of the Jews, owing to the fact that their alienation or lease to Jewish settlers would prejudice the rights and position of the other sections of the population, namely, in this case, the Arab villagers and tribes in occupation of the above lands. There is, however, another aspect to the question to which attention should be drawn. We have seen that the Mandatory considers it to be his duty to take into consideration not only the legal rights of the local population with regard to land tenancy, but also the ‘moral validity’ which such tenancy may have acquired. The mandate, indeed, does not speak merely of the inhabitants’ rights, but equally of their interests and position, which the Mandatory is bound to safeguard. Thus the Transfer of Land Ordinances of 1920 and 1921 have provided that, in case of alienation of agricultural land, the tenant in occupation shall retain sufficient land for the maintenance of himself and his family. In the interests of the local inhabitants it has been found necessary to supersede such fundamental rights as are inherent in individual ownership, and thus to protect them sometimes even against themselves. But the above condition imposed upon certain land transfers in Palestine contains its own limitation, and any law or agreement giving such protection to or safeguarding such interests of owners of estates larger than those required for their own maintenance would hardly be compatible not only with the close settlement policy but also with the interests of the country as a whole.

This point, as it appears now, was not fully borne in mind by the Palestine Administration in providing for

¹ *P.M.C.*, Minutes of 7th Session, p. 114.

the wholesale alienation of the Ghor State lands under the Beisan Land Agreement. In those cases, at least, where no legal rights were involved, it seems that the 'moral validity' of tenancies should not have been extended so as to provide the tenant with land in excess of his requirements, for subsequent sale and possible speculation. This is, however, what appears actually to have happened. It was stated before the Permanent Mandates Commission, at its ninth session, that State lands which had been granted under the Beisan Agreement were being offered for sale by the beneficiaries, presumably at higher prices and under better conditions than those stipulated in the agreement in favour of the Administration. This anomalous, though undoubtedly unintentional, consequence of the Beisan Agreement is most striking in the case of these lands being acquired by Jews, in favour of whom the mandate has provided for a policy of close settlement on the land, expressly including State lands.

It is only right to point out, however, that the Beisan Land Agreement was concluded in a year of considerable political unrest, and may have helped to weaken the increasing influence of the local agitators.

3. PUBLIC WORKS AND CONCESSIONS

The question of public works and concessions is dealt with in Article 11 of the mandate, which runs as follows :

'The Administration of Palestine shall take all necessary measures to safeguard the interests of the community in connection with the development of the country, and, subject to any international obligations accepted by the Mandatory, shall have full power to provide for public ownership or control of any of the natural resources of the country or of the public works, services and utilities established or to be established

therein. It shall introduce a land system appropriate to the needs of the country, having regard, among other things, to the desirability of promoting the close settlement and intensive cultivation of the land.

‘The Administration may arrange with the Jewish agency mentioned in Article 4 to construct or operate, upon fair and equitable terms, any public works, services and utilities, and to develop any of the natural resources of the country, in so far as these matters are not directly undertaken by the Administration. Any such arrangements shall provide that no profits distributed by such agency, directly or indirectly, shall exceed a reasonable rate of interest on the capital, and any further profits shall be utilized by it for the benefit of the country in a manner approved by the Administration.’

As may be seen from this quotation, the second paragraph of Article 11 is directly connected with the provisions of the mandate regarding the national home policy, and it has already been pointed out that the reference in paragraph 1 of the Article to ‘close settlement and intensive cultivation of the land’ is to be read together with Article 6 of the mandate dealt with in the preceding section. There is, however, more than a verbal connection between the above Articles 6 and 11. Indeed, the question of State and waste lands is closely related to that of concessions, as unless such lands are definitely disposed of, as in the case of the Ghor lands, they are to constitute the object of concessions. Thus the lease granted to the Palestine Jewish Colonization Association on the Kabbara lands is a concession providing for their reclamation and development. A clear distinction is made, however, in the mandate with regard to the obligations of the Mandatory as to concessions of State and waste lands on the one hand, and all other concessions on the other. As regards the first, we have seen that Article 6 provides that ‘the Administration of Palestine . . . *shall* encourage . . . close settlement by

Jews on the land, including State lands and waste lands'; while in the case of concessions in general it is provided in Article 11, paragraph 2, that 'the administration *may* arrange with the Jewish agency . . . to construct or operate, etc.' The provision is of a compulsory character in the first case, and no more than permissive in the second. One practical consequence of this difference is, that if the Mandatory does not act upon the provisions of Article 6, the Jewish agency is entitled to petition the League on the ground that the policy of the Administration is not in conformity with the mandate¹; no such course is open to the Jewish agency under Article 11, paragraph 2, the Mandatory having been assigned discretionary authority in the matter.

The following seem to be the main reasons why it was not thought necessary to treat the above two matters (respectively referred to in Article 6 and Article 11, paragraph 2, of the mandate) on the same footing in so far as they came within the scope of the Mandatory's obligations towards the Jewish agency:

1. While it may be said that the settlement of Jews on the land as provided for in Article 6 of the mandate is a condition *sine qua non* of the establishment of the national home, this can hardly be true as regards concessions in general. Although the grant of concessions to Jewish enterprise may, and in fact undoubtedly would, result in encouraging immigration by providing employment to Jewish labour, and therefore greatly help in the establishment of the national home, yet this is not of so vital and immediate importance to the latter as Jewish settlement on the land.
2. Jewish settlement on the land in Palestine is in need of special encouragement on the part of the Admini-

¹ In fact, the prolonged delay in giving effect to the provisions of this Article regarding State and waste

lands was the most important point raised in the petitions of the Zionist Organization.

stration, both because not all the available land is cultivated by the local population, and because it is desirable that the two main national elements in the country should equally be in possession of the Palestinian soil, in so far as this does not affect any acquired rights or established interests. On this account such preferential treatment as may have been granted to Jewish settlers in virtue of Article 6 of the mandate may be sufficiently justified on the ground of its being in the interests of the country as a whole, and as a means of creating such new conditions in the distribution of land in Palestine as would be more in keeping with the new status of the country. There was no such reason for similar treatment in the matter of concessions with regard to which the position of the various sections of the local population is substantially the same. In these circumstances, a compulsory provision to grant concessions to the Jewish agency would mean discriminating in favour of one section of the population at the expense sometimes of the other. In fact, concessions *may* be granted to the Jewish agency, as it is assumed that its financial capacity, both direct and indirect, is at present greater than that of the local inhabitants, but the rights and interests of the latter have been explicitly safeguarded.

3. The question of concessions is closely connected with the mandates system itself, both in theory and practice. It was associated with the allocation of mandates, and the prospect of its favourable solution constituted in several cases a determining factor in securing the necessary consent of interested Powers. Equality, as regards concessions, between the nationals of all 'Members of the League,' including the Mandatory, is explicitly guaranteed by the mandates system, and also by Article 18 of the Palestine Mandate. It is true, as we shall see, that in the A mandates, unlike those of the other categories, the inhabitants are recognized as possessing

a certain priority *vis-à-vis* all foreign nationals ; but the granting of concessions to the latter had to be left to the discretion of the Mandatory. This is, indeed, a bargaining asset of first importance which, if properly used, may prove to be in the best interests of the country as a whole. To place the Mandatory under special obligation towards the Jewish agency in the matter of concessions would mean to prevent the Administration from using freely a valuable asset for the purpose of securing commercial, economic and other advantages for the country.

These few remarks seem to be necessary in view of the criticism to which the provision of Article 11, paragraph 2, has been subjected, from diametrically opposed motives, on account of its permissive character.

The Mavrommatis Case and the Rutenberg Concessions.—Article 11 is one of the few Articles of the Palestine mandate which has been given full interpretation and thus cleared of many controversies which the vagueness of its wording would largely invite. This Article was, indeed, one of the foundations of a claim brought by Greece against the Mandatory before the Permanent Court of International Justice. The Greek Government identified themselves with one of their subjects, a M. Mavrommatis, alleged holder of Ottoman concessions in Palestine, while the British Government, in its capacity as Mandatory, undertook the defence of a concession, partly covering the same ground as the above, granted by the Palestine Administration to a Mr. Rutenberg, through the Zionist Organization. It was contested by the claimant that

‘ The fact that Palestine has ceased to be an Ottoman province and was erected into a State under mandate of Great Britain, with a national home for the Jewish people, does not alter the juridical position created before the war in favour of M. Mavrommatis. It is, indeed,

established in international law that all rights validly acquired by individuals in a given territory preserve their force and value in spite of any change in sovereignty which has come over this territory. The new sovereign is, on the same ground as the previous one, bound to respect them and, if need be, to have them respected.’¹

Moreover, this universally established principle has been explicitly applied in the particular case of ex-Turkish territory by the Treaty of Sèvres (Articles 311 and 312), and subsequently by the Protocol relating to certain concessions granted in the Ottoman Empire, known as Protocol XII, attached to the Treaty of Lausanne (Article 1).

The main point, therefore, which the Permanent Court of International Justice had to ascertain was not the question of the application of the above principle to Palestine, but whether, and if so to what extent, the concessions were binding upon the Turkish Government itself. From the outset it seemed fairly clear that little doubt could be entertained as to the validity of the Jerusalem electricity and water concessions duly entered into on January 27, 1914, *i.e.* before the Turkish declaration of war. On the other hand, the Greek Government thought it best to abandon part of their original claim concerning irrigation works in the Jordan Valley, as the only ground on which it could be based was an ‘*accord verbal*,’ the signing of a proper contract having been prevented by the outbreak of the war. As regards, however, the electricity, water and irrigation concessions in Jaffa and its neighbourhood, they seem to have been definitely granted, but not ratified by the Imperial Firman, which had to be given in accordance with a newly promulgated Turkish law. The Greek Government maintained that this was a

¹ Translated from *Mémoire du Gouvernement hellénique* (P.C., Series C, No. 5-I, p. 105).

mere formality which did not affect the validity of the concession, while the British contention was that without the above Firman the contract could not become binding upon the Turkish Government, and consequently its recognition did not constitute an 'international obligation' in the meaning of Article 11 of the Palestine mandate. This being so, neither the interpretation nor the application of the mandate was any longer in question, and therefore Article 26 of the mandate, placing the Mandatory under obligation to submit in such disputes to the jurisdiction of the Permanent Court of International Justice, did not apply.

The preliminary objection to the jurisdiction of the Permanent Court, submitted by the British Government, was dealt with in the judgment delivered on August 30, 1924.¹ The objection was upheld in so far as it related to the claim in respect of the works at Jaffa, and dismissed in so far as it related to the claim in respect of the works at Jerusalem.² The ground having thus been cleared by the Court, only the Jerusalem concessions were reserved for judgment on their merits. The decision of the Court may be explained on the ground that, by its reference to 'international obligations,' Article 11 of the mandate is brought into the scope of the dispute, in spite of the fact that the question of concessions is separately dealt with in other international documents such as the Treaty of Sèvres and subsequently the Protocol XII, attached to the Treaty of Lausanne. The 'international obligations' referred to in Article 11, it is said, are precisely those which have been assumed by the Mandatory in his capacity as signatory to the above Treaty or Protocol. This reference brings, therefore, such international obligations into the scope of the Palestine mandate, and consequently places the Mandatory under obligation to

¹ *P.C.*, Series A, No. 2.

² *Ibid.*, p. 36.

submit to the jurisdiction of the Permanent Court of International Justice, in virtue of Article 26 of the mandate.

The jurisdiction of the Permanent Court having thus been established, as far as the Jerusalem concessions were concerned, the Court was asked to decide as to their validity and the extent to which the Mandatory was to be held responsible for their maintenance. The British contention was that the Mavrommatis Jerusalem concessions were not valid, and therefore not binding on the Palestine Administration, on the ground that: (1) 'M. Mavrommatis is referred to in both concessions as an Ottoman subject, whereas his real and only nationality is Greek,' so that 'the concessions were granted in error'¹; (2) 'The protection accorded by the Protocol to the nationals of Contracting Powers other than Turkey cannot be invoked in respect of Ottoman concessions granted to a beneficiary described as an Ottoman subject.'² The Court, however, pointed out that, 'since the identity of the person has never been in any doubt, the error can only relate to one of the attributes of the *cessionnaire*. The absolute nullity, therefore, of the concessions would appear to be excluded.'³

The Permanent Court was equally called upon to decide whether the above concessions fell under Articles 4 and 5 of Protocol XII—contracts which have to be re-adapted to the new economic conditions; or under Article 6—contracts which may be dissolved as not having 'begun to be put into operation' on the date of the Protocol (July 24, 1923). In interpreting the French text—the only authoritative one of the Protocol—the Court laid stress on the difference between the expressions '*commencement d'exécution*,' as proposed in the original draft, and '*commencement d'application*,' as definitely adopted in the Protocol. It came to the con-

¹ *P.C.*, Series A, No. 5, p. 28.

² *Ibid.*, p. 29.

³ *Ibid.*, p. 30.

clusion that while there may have been no '*commencement d'exécution*' of the works of the concession, there had actually taken place a '*commencement d'application*' of the contract of concession, thus entitling the beneficiary to re-adaptation. '*Application*,' says the judgment, 'is a wider, more elastic and less rigid term than *exécution* ; and this may be the reason which led to its insertion in the Protocol of Lausanne, in order to distinguish between concessions which are entitled to re-adaptation and those that are not.'¹ The English version, 'begun to be put into operation,' is still more elastic, and, as pointed out by the claimant, may even be extended so as to refer to contracts which have merely 'entered into force,' thus infinitely restricting the number of cases in which Article 6 could be applied. It has, however, to be pointed out that the English version, not being authoritative, can only be invoked in so far as it throws light upon the intentions of the contracting parties.

The main point to which it seems necessary to devote special attention is the legal relation between the Mavrommatis and Rutenberg concessions. When the latter were granted (September 21, 1921), some doubts existed as to the validity of the Mavrommatis concessions and the extent to which they were binding upon the Mandatory. A special clause (Article 29) was inserted in the 1921 agreement to the effect that

'In the event of there being any valid pre-existing concession covering the whole or any part of the present concession, the High Commissioner, if requested in writing by the company so to do, shall take the necessary measures for annulling such concession on payment of fair compensation agreed by the company. . . .'

The British Government contended, and the Court agreed, that 'by giving Mr. Rutenberg the right to

¹ *Ibid.*, p. 48.

ask for annulment, the Article implies that, should he not make a request to that effect, he will not have the right to treat such concessions as null, and that, until annulled, in the manner provided for, they must be maintained.’¹ But the main question is whether or not the fact itself that the new *cessionnaire* had been granted the right to ask for the annulment of previous concessions constituted a violation of international obligations on the part of the Mandatory. It seems clear that—subject to the time limit, as mentioned below, for the exercise of the above right—no such violation would have been committed had the Treaty of Sèvres been in force, as Article 311, paragraph 2 of this treaty provided that

‘any such Power [in trust of a territory detached from Turkey], if it considers that the maintenance of any of these concessions would be contrary to the public interest, shall be entitled, within a period of six months from the date on which the territory is placed under its authority or tutelage, to *buy out* such concession or to propose modifications therein.’

This right, however, does not exist under Protocol XII, which has been substituted for the provisions of the Treaty of Sèvres regarding concessions in Turkey or ex-Turkish territories. The fact that while the case was under consideration of the Permanent Court the new *cessionnaire* had definitely renounced, on the request of the Mandatory, the right to avail himself of clause 29 of the agreement, did not, in the opinion of the Court, alter the situation in law. ‘The fact remains,’ says the judgment, ‘that prior to that statement [of renunciation] the Article [clause 29] did exist and was to the effect indicated above, and the question is whether this fact alone constituted a violation

¹ *P.C.*, Series A, No. 5, p. 33.

of the international obligations contemplated in Article 11 of the mandate.’¹ This question the Court answered in the affirmative, holding that ‘so long as Mr. Rutenberg possessed the right to require the expropriation of the Mavrommatis concessions, the clause in question was contrary to the obligations contracted by the Mandatory when signing the Protocol.’² As regards compensation, however, the Court was of the opinion that the above clause 29 of the 1921 agreement ‘has not in fact either led to the expropriation or annulment of M. Mavrommatis’ concessions or caused him any loss which might justify a claim on his behalf for compensation in the present proceedings.’³

These were the final conclusions arrived at by the Court. It appears both from the first judgment, on the preliminary objection raised by the British Government to the jurisdiction of the Permanent Court,⁴ and from the second judgment, on the merits with regard to the Jerusalem concessions,⁵ that the Court was mainly concerned with paragraph 1 of Article 11 of the mandate, namely, with the provision according the Palestine Administration ‘full power to provide for public ownership or control of any of the natural resources of the country,’ etc., subject to ‘any international obligations accepted by the Mandatory.’ It is in the exercise of these full powers that, in the opinion of the Court, the Rutenberg concessions were granted,⁶ although an effort of construction and interpretation had to be previously made in order to bring these concessions within the scope of ‘public control’ in the meaning of Article 11, paragraph 1 (there being no question of ‘public ownership’ in this case). A lengthy argument, based on a comparative interpretation of the English version of ‘public control’ and the French ‘*contrôle public*’ (both being

¹ *Ibid.*, p. 38.

² *Ibid.*, p. 40.

³ *Ibid.*, p. 45.

⁴ *Ibid.*, No. 2, p. 18.

⁵ *Ibid.*, No. 5, p. 27.

⁶ *Ibid.*

equally authoritative), is contained in the first judgment of the Court.

It was there and then pointed out, and again repeatedly emphasized when the Mavrommatis concessions came for the third time before the Permanent Court of International Justice,¹ that 'the grant of a concession 'does not in itself constitute an exercise of the full power' to provide for 'public control.'² The Court found it necessary to lay particular stress on this part of its judgment, presumably in view of the fact that 'the representative of the Greek Government seems to have held that not only would the grant of a concession of public utility always constitute an exercise of public control, but that any act performed by the Administration in connection with the grant of a concession would also have the same character.'³ The 'delays' and 'hostility' complained of by the Greek Government—although of a negative nature—would thus fall under the exercise of 'public control' within the meaning of the mandate. It was indeed pointed out by the Greek National Judge, in his dissenting opinion, that 'in regard to concessions, every *positive* or *negative* act which the Administration accomplishes in the exercise of its full powers is an act of *public control* within the meaning above indicated.'⁴ This wide interpretation of the expression in question is based on the theory that 'the full powers which that Administration [of Palestine] exercises are not the full powers of an ordinary public administration; they are powers within the meaning always of public control, because the

¹ In the application filed with the Registry of the Court in May 1927 it was submitted by the Greek Government that the Mandatory had not complied with the terms of the previous judgment of the Court (No. 5), and that the delays and hostility displayed towards M. Mavrommatis by certain British authorities — 'which delays and

hostility were due to Mr. Rutenberg's opposition'—had rendered it materially and morally impossible for M. Mavrommatis to obtain the financing of his concessions; damages were consequently claimed (*P.C.*, Series A, No. 11, p. 6).

² *Ibid.*, p. 17.

³ *Ibid.*, p. 19.

⁴ *Ibid.*, p. 52-53.

purpose of the mandate is the development of the country, either as regards natural resources, or as regards public works and utilities which have to be undertaken in the public interest.' ¹ Then follows an interesting analysis of the obligations of tutorship assumed by the Mandatory which tends to strengthen the conclusion that an almost unlimited interpretation is to be placed on the expression 'public control' of Article 11 of the mandate.

Although this was far from being the opinion of the majority of the Court from the very outset, yet as regards the Rutenberg concessions it agreed that they 'constitute an application by the Administration of Palestine of the system of "public control" with the object of developing the natural resources of the country.' ² This conclusion appears to be based on the provision of Article 28 of the Rutenberg concessions to the effect that 'the undertaking of the company under this concession shall be recognized as a public utility body under government control,' and in the opinion of the Court the expression 'government control' 'appears rather to be connected with the recognition of the undertaking as a public utility body.' ³ Moreover, the Court considered that this view of the character of the concessions was further corroborated by their relation to the Jewish agency which 'is in reality a public body closely connected with the Palestine Administration,' so that they were made in pursuance of 'a program of economic policy.' ⁴ The wording as well as the general disposition of Article 11 seems, however, to suggest that, while the first paragraph was mainly intended to deal with direct undertakings of the Administration regarding the natural resources of the country, etc., the second paragraph was meant to provide for possible arrangements with the

¹ *Ibid.*, pp. 50-51.

² *Ibid.*, No. 2, p. 21.

³ *Ibid.*, p. 20.

⁴ *Ibid.*, p. 21.

Jewish agency with regard to such activities 'in so far as these matters are not directly undertaken by the Administration.' The Rutenberg concessions, it would seem, belonged to the latter category, both because they do not constitute a direct government undertaking and on account of their having involved certain arrangements with the Jewish agency.

The Court did not dwell in its second judgment upon the part played by the Zionist Organization in its capacity as Jewish agency in connection with the Rutenberg concessions, but simply stated that 'the nature of the relations existing between Mr. Rutenberg and the Zionist Organization mentioned in Article 4 of the Palestine mandate has been discussed at length before the Court.'¹ Various references are made both in the first and second judgment which strongly suggest that the Jewish agency, although not the direct *cessionnaire*, was nevertheless considered throughout as intimately connected with the Rutenberg concessions. Thus it is mentioned that when the question of the validity of the Mavrommatis concessions was raised, the Palestine and British authorities 'invited the interested party to come to an understanding with the Zionist Organization and Mr. Rutenberg.'² Again, the second judgment speaks of 'the influence of the Zionist Organization in the affairs of Palestine'³ inasmuch as this influence was alleged by the claimant to have affected the Mavrommatis concessions. Moreover, in virtue of Article 2 of the agreement relating to the Jordan concession and of Article 34 of the Jaffa concession, the statutes of the Rutenberg Company were to be approved by the High Commissioner in agreement with the Jewish agency. Consequently it seems that the Rutenberg concessions may safely be considered as falling under the terms of the second paragraph of

¹ *P.C.*, Series A, No. 5, p. 17. ² *Ibid.*, No. 2, p. 19. ³ *Ibid.*, No. 5, p. 43.

Article 11 referring to such public works and concessions as 'the Administration may arrange with the Jewish agency.' Why then did the Court persistently refer to these concessions as being within the scope of the first paragraph of the above Article ?

The main reason, as it seems, is to be found in the fact that the words 'subject to any international obligations accepted by the Mandatory' figure only in the first paragraph, and it was feared that the absence of such words in paragraph 2 might be used for corroborating some contention to the effect that no such reservation was intended to apply in the event of a concession being granted by arrangement with the Jewish agency. In order to avoid the possibility of such argument being raised, the Court appears to have evaded the point by somewhat forcibly bringing the Rutenberg concessions within the scope of paragraph 1. It has, however, to be pointed out that, in spite of what the general disposition of Article 11 may suggest to the contrary, no real doubt could ever be entertained as to the fact that any new concessions, whoever the direct or indirect *cessionnaire* might be, were made subject to international obligations which have been assumed by the Mandatory. It has, indeed, been explicitly stated in the Preliminary Counter-Case filed by the British Government that 'it would have been open to any Member of the League to question provisions in those [Mr. Rutenberg's] concessions which infringed the international obligations which His Britannic Majesty as Mandatory for Palestine had accepted.'¹ This written statement has been developed in the oral pleading of the British agent, who thought that the words 'subject to any international obligations,' etc., were 'a limitation upon the powers of the Mandatory which is so obvious that it is implied in the second

¹ P.C., Series C, No. 5-I, p. 445.

paragraph just as much as in the first. The Mandatory cannot, in making his arrangements for the development of the natural resources of the country, ignore the international obligations which he has accepted.' ¹

It remains to be seen what exactly was meant by the above limitation inserted in Article 11, paragraph 1, and whether any—and if so what—special reason was responsible for its omission from the second paragraph. The widest interpretation seems to have been given to the reservation by the Greek Government, which was of the opinion that it included 'all international obligations in general.' The Court, however, pointed out that such a contention 'does not appear to take sufficient account of the peculiar importance attaching to the words "accepted by the Mandatory," which obviously contemplate obligations contracted,' etc.² On the other hand, it was maintained by the British Government—at least in the Preliminary Counter-Case, as we have just seen—that the international obligations referred to in Article 11, paragraph 1, were those 'which His Britannic Majesty as *Mandatory for Palestine* had accepted'; in other words, which the British Government had accepted under the terms of the mandate for Palestine. The reservation would, therefore, refer only to the provisions of the mandate itself, and in particular to those of Article 18 regarding equal opportunity for all Members of the League.³ A comparison between this contention and what has been maintained in the oral pleading as quoted above seems to suggest that the restrictive interpretation originally given by the British

¹ *P.C.*, Series C, No. 5-I, p. 36.

² *Ibid.*, Series A, No. 2, p. 24.

³ 'The mandate over Palestine,' says the Preliminary Counter-Case of the British Government, 'is exercised by His Britannic Majesty on behalf of the League, and the League of Nations is pledged to the maintenance of various beneficent principles, such as freedom of transit

and communications, equality of commercial opportunity for all Members of the League, suppression of the arms traffic, and so forth. This is the type of international obligations which the Mandatory has accepted and to which any concessions granted under Article 11 of the mandate must conform' (*P.C.*, Series C, No. 5-I, p. 445).

Government to the reservation in question was no longer fully maintained. In the first judgment the Court abstained from expressing its opinion on these opposing contentions, but in the second it held that the international obligations referred to in paragraph 1 of Article 11 were 'constituted solely by the Protocol of Lausanne. For no other instrument creating international obligations contracted by the Mandatory has been brought to the Court's knowledge, and it does not appear that any such exist.'¹ In favour of the Court's decision it may be mentioned, *inter alia*, that the draft of the provision in question was understood to have been worded 'subject to Article 311 of the Treaty of Peace with Turkey'; the expression 'subject to any international obligations accepted by the Mandatory' was substituted for the above when it became clear that the Treaty of Sèvres would not become operative.² It may, however, be said that the original contention of the British Government seems to be corroborated by the wording of Article 18 of the mandate, which, referring (in paragraph 2) to the steps which the Administration of Palestine 'may think best to promote the development of the natural resources of the country,' makes the taking of such steps subject to the obligations set out in the preceding paragraph, to the effect that 'the Mandatory shall see that there is no discrimination in Palestine against the nationals of any State Member of the League of Nations,' etc.

From the point of view of the original interpretation given to Article 11 by the British Government there would seem to be a definite answer in the affirmative to the question whether the much-disputed reservation contained in paragraph 1 was omitted from the second for any special reason. The general disposition of

¹ *P. C.*, Series A, No. 5, p. 27.

Article 11 of the mandate see *Cmd.*

² *Ibid.*, No. 2, p. 24. For draft

1500 (1921), p. 9.

Article 11 would thus be explained in the following manner: While not excluding such limitations upon the powers of the Mandatory in connection with the development of the country as may result from the general obligations assumed by him, including obligations under the Protocol of Lausanne (this, indeed, would seem obvious in virtue of the general principles of international law), the two paragraphs of Article 11 contemplate two different alternatives according to whether the Mandatory directly undertakes the development of the natural resources of the country or carries them out by arrangement with the Jewish agency. In the first case, he would be bound, in virtue of the reservation embodied in Article 11, paragraph 1, by the provisions of the mandate regarding equality of treatment, and especially that there shall be no discrimination against any Member of the League; in the second, he would not be under such obligation, owing to the absence of a similar reservation from paragraph 2 of Article 11. There can be little doubt, it would seem, that the authors of the mandate did not intend to make the granting of concessions directly or indirectly to the Jewish agency subject to such obligations as may result from the principle of equality of treatment embodied in Article 18 of the mandate. The Jewish agency is not a State nor a Member of the League; it is, as we have just seen, 'a public body, closely connected with the Palestine Administration,' whose task it is 'to co-operate with that Administration, and under its control, in the development of the country.'¹ In this capacity, it seems to have been the definite intention of the mandate that the Jewish agency should not stand on a mere footing of equality with nationals or companies of foreign States, including the Mandatory. On the other hand, it can hardly be said that a definite right of priority has been accorded in

¹ *P.C.*, Series A, No. 2, p. 21.

this respect to the Jewish agency, since the Mandatory is under no obligation, as we have seen, to grant any concessions to the Jewish agency, except in so far as he is held responsible for the development of the natural resources of the country as a whole and the best way of carrying it into effect.

4. NATIONALITY AND NATURALIZATION

The mandate for Palestine is the only one which contains a special provision with regard to the nationality of the inhabitants. As far as the B and C categories of mandates are concerned, no definite provision could, indeed, be inserted, owing to the fact that at the time of the drafting of these mandates a great deal of controversial ground had to be gone over before any solution could be reached. But no such uncertainty, as we shall see, has ever existed in this respect with regard to the A mandates, which nevertheless do not, except in the case of Palestine, mention the question of nationality. One seems, therefore, to be justified in thinking that the object of the above special provision in the Palestine mandate was not so much to secure the enacting of a local nationality law—this would have had to be done in any case, as in the other mandated territories—but to ensure the inclusion in this law of special provisions, the nature of which may be seen from the following quotation. Indeed, Article 7 of the mandate provides that

‘the Administration of Palestine shall¹ be responsible for enacting a nationality law. There shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine.’

¹ ‘will’ in the draft mandate.

Were it not for the second part of this Article, no provision concerning nationality would have been inserted in the Palestine mandate any more than in the mandate for Syria and the draft mandate for Mesopotamia.¹

In virtue of the above Article, the Mandatory has assumed two obligations quite distinct from each other in their underlying principles, only the second obligation being directly connected with the national home policy. The following remarks will therefore be limited only to such aspects of the question as may affect the national home policy, the question of citizenship in Palestine as a whole being reserved for Part II of this volume, dealing with the international status of the country.

By the wording of Article 7 of the mandate a connection was clearly established between the then contemplated nationality law and the national home policy. The nature and extent of this connection, however, have to be carefully defined in view of the controversy that has arisen as to what the nationality in Palestine should be. While the above Article may mean—in fact undoubtedly does mean—that the nationality law in Palestine is to be used to further, in its own sphere, the national home policy, it does not necessarily mean that the latter is to affect such fundamental principles of this law as would have been adopted had there been no such policy in existence.

It has been maintained that, as a consequence of the national home policy, Jewish nationality should be recognized in Palestine, *i.e.* that the Jewish population in Palestine should constitute the national element in the country—like the English population in England, for instance. The Report of the High Commissioner for Palestine (1920-1925), as we have seen, puts this point of view in the following terms : ‘ If the Jews were declared

¹ *Cmd.* 1500 (1921), pp. 2-6.

to be a "people" and entitled to a "national home," a member of that people, it should seem, must possess that nationality.' ¹ This is true only if the term 'nationality' is taken as indicating the relation between the individual and the nation, or as Oppenheim calls it, 'nationality *qua* race'; it is not true if what is meant by 'nationality' is citizenship, *i.e.* the relation between the individual and the State. The fundamental idea of those who maintain that the recognition of a Jewish national home involves that of Jewish citizenship in Palestine seems to be based on the widely spread confusion between the terms 'nationality' and 'citizenship.' ² The Balfour Declaration has been frequently appealed to in this controversy, but it seems to be wholly irrelevant for the purpose of establishing the national status of the inhabitants of Palestine, whether Jews or non-Jews.

This has been the object of other documents which clearly indicate what the above national status was from the outset intended to be. Article 129 of the Treaty of Sèvres already speaks of 'citizens of Palestine'; and so does Article 35 of the draft terms of the Treaty of Lausanne, which was originally meant to take the place of the above Article 129, but was subsequently omitted for reasons which do not clearly appear from the minutes of the Lausanne Conference. These Articles, which will be dealt with below, cannot, however, be of great practical importance, since the one belongs to an unratified treaty and the other merely to a draft treaty. In these circumstances, the only text which is to be taken into consideration for the purpose of establishing the national status of the inhabitants of Palestine is Article 7 of the mandate itself; and the above Article 129 of the Treaty of Sèvres, which survived until the

¹ *Colonial*, No. 15 (1925), p. 26.

² See *supra*, The Principle of Nationality and the Jewish People, pp. 57-58.

Lausanne Peace Conference, may be used to establish the fact that the recognition of a 'Palestinian Citizenship' was not originally decided upon by the authors of the mandate, as has sometimes been asserted for the purpose of proving some alleged inconsistency between the Balfour Declaration and the mandate.

Moreover, the principle laid down in this respect in the Palestine mandate is in complete conformity with the underlying principles of the mandates system and the practice adopted in the various mandated territories. Indeed, in all territories under mandate the denomination of what is called 'national status' is of territorial and not national character.¹ In the B and C mandated territories the reason is to be found in the fact that they constitute merely geographical expressions, it being hardly possible to speak of national entities in these areas. As regards the territories under A mandates, the situation is quite different, and yet the national status of their inhabitants is equally of territorial character and denomination. It would, indeed, be contrary to the fundamental principles of the mandate if the national status of the local inhabitants were to be that of one section of the population, however predominant, and were to be forcibly imposed upon the others. That is why there is an internationally recognized Syrian citizenship and not an Arab, Maronite or Druse nationality in Syria, and a Palestinian citizenship and not an Arab or Jewish nationality in Palestine.

In outlining the British policy in Palestine, the Mandatory has repeatedly emphasized the fact that the Jewish national home does not imply 'the imposition of a Jewish nationality upon the inhabitants of Palestine as a whole,'² and that 'the status of all citizens of Palestine in the eyes of the law shall be Palestinian.'³

¹ J. Stoyanovsky, *op. cit.*, p. 96.

² *Cmd.* 1700 (1922), p. 19.

³ *Cmd.* 1708 (1922), p. 4.

‘Finally it was made clear,’ says the above-quoted High Commissioner’s Report, ‘that the “nationality” to be acquired by all citizens of Palestine, whether Jews or non-Jews, whether for the purposes of domestic law or of international status, would be “Palestinian” and nothing else.’¹

The question of the national status of the inhabitants of Palestine has thus been found to be outside the scope of the main object of Article 7 of the mandate as outlined above. The connection between the nationality law and the national home policy, as contemplated in this Article, has been limited, indeed, by its very wording, to ‘provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine.’ It is therefore only the question of naturalization that is dealt with in Article 7 of the mandate in connection with the national home policy—a question which is, indeed, of the utmost importance to the latter. It would be hardly, if at all, possible to pursue this policy and at the same time to refuse the benefits of naturalization to Jewish immigrants who intend settling in Palestine. Theoretically, such immigrants have a right to Palestinian citizenship under the conditions laid down by the local law, this right being based not only on the above Article 7 but on the very principle of ‘the historical connection of the Jewish people with Palestine’ as laid down in the preamble of the mandate. From the practical point of view the recognition of the above right is a condition *sine qua non* of the realization of the ultimate ends of the mandate, namely, that the Jewish community in Palestine be entitled to share with the other sections of the population in the administration of the country when the latter is declared able to stand alone.

Before dealing with the naturalization clauses of the

¹ *Colonial*, No. 15 (1925), p. 27.

nationality law in Palestine—the only clauses with which we are here concerned—it may be of interest to mention that special provisions were previously contemplated, in the peace treaties with Turkey, for the naturalization of Jews in Palestine in pursuance of the national home policy. Thus the nationality clauses of the Treaty of Sèvres provided in Article 129 that

‘Jews of other than Turkish nationality who are habitually resident, on the coming into force of the present treaty, within the boundaries of Palestine, as determined in accordance with Article 95, will *ipso facto* become citizens of Palestine to the exclusion of any other nationality.’

This provision—instituting a special *régime* for a certain category of Jews—illustrates how far the Powers were prepared to apply to questions of nationality the above principle of the historical connection embodied in the then draft mandate. It meant that the States signatories to the Treaty of Sèvres agreed to renounce subjects of their own, provided the latter were at the time habitually resident in Palestine. In the eyes of these States who as signatories of the treaty have *ipso facto* declared themselves in favour of the national home policy, the bonds created between Jews of the above category and Palestine were to supersede those of citizenship which connected them with their respective States of origin. As far as is known, it is hardly possible to find another case in which citizens of third Powers have had their citizenship automatically affected as a consequence of the transfer of the territory in which they habitually resided. The justification for such an exception to international law and practice was presumably intended to be found in the national home policy, although it is still difficult to see why those concerned were granted, under Article 129 of the Treaty of Sèvres, no right of

option in the event of their wishing to retain their former citizenship.¹

It is in order to fill this gap, as well as to avoid possible friction with States non-signatory to the peace treaty with Turkey, that the above Article was subsequently amended and replaced by the following provision embodied in Article 35 of the draft terms of the Treaty of Lausanne :

‘ Jews of other than Turkish nationality who are habitually resident in Palestine on the coming into force of the present treaty will have the right to become citizens of Palestine by making a declaration in such form and under such conditions as may be prescribed by law.’²

This provision, while expressly recognizing the right of the above category of Jews to Palestinian citizenship, removes the compulsory character of Article 129 of the Treaty of Sèvres. Article 35 of the draft terms of peace was, however, not inserted in the final text of the Treaty of Lausanne, and nothing was substituted for it. The reason, although not stated, may be found in the fact that the mandate for Palestine, which had been ratified in the meantime, contained a general provision to the effect that in the contemplated nationality law there should be included facilities for the acquisition by Jews of Palestinian citizenship.

No definite period has been fixed in the mandate during which the above law was to be enacted. This is due to the fact that questions of nationality in transferred territories are generally regulated, as to their broad lines at least, by the very treaty in virtue of which the transfer is effected. There was a fundamental

¹ It seems, indeed, to be hardly reconcilable with the express provision of the Balfour Declaration (embodied both in the Treaty of Sèvres and the mandate) that, as a consequence of the establishment of the national home in Palestine,

‘ nothing should be done which might prejudice . . . the rights and political status enjoyed by Jews in any other country.’

² Records and Proceedings of the Lausanne Conference, 1922-23, *Cmd.* 1814 (1923), pp. 697-698.

difference between the nationality law and the law of antiquities, for instance, for the enactment of which a period of one year was contemplated in the mandate; or the organic law in Syria, which the Mandatory was to enact within a period of three years. Legally speaking, none of these laws could be valid unless a treaty of peace with Turkey had previously been signed and ratified; but as there was no possible doubt regarding the ultimate transfer of the territories concerned, laws of mere domestic character could be enacted on the assumption that the treaty of peace to be subsequently concluded would ratify them implicitly. The treaty in question, however, was only signed in July 1923, and came into force on August 6, 1924, and this is what explains to a great extent the delay in the enacting of the nationality law in Palestine, known as the Palestine Citizenship Order, 1925.¹

The only part of the Order which will have to be dealt with in this section is that regulating the question of naturalization, since, as we have seen, all matters connected directly with the national status of the local inhabitants are to be considered as outside the scope of the national home policy. We have to examine here what facilities of naturalization have been recognized in the Palestine Citizenship Order, 1925, to Jews who take up their permanent residence in Palestine, in accordance with Article 7 of the mandate. Part III of the Order is devoted to questions of naturalization, and the following remarks will therefore be limited to its principal provisions, the other questions dealt with in the Order, mainly those based on the nationality clauses of the Treaty of Lausanne, being reserved for later examination in connection with the international status of Palestine.

Section 7, clause 1 of the Order provides that

¹ *O.G.*, No. 147, Sept. 16, 1925.

‘The High Commissioner may grant a certificate of naturalization as a Palestinian citizen to any person who makes application therefor and who satisfies him :

‘(a) That he has resided in Palestine for a period of not less than two years out of the three years immediately preceding the date of his application.

‘(b) That he is of good character and has an adequate knowledge of either the English, the Arabic or the Hebrew language.

‘(c) That he intends, if his application is granted, to reside in Palestine.’

It can be seen from the above provision that it contains no reference to special facilities to Jews as such, and that special stress is laid on conditions of residence.

With regard to the first point, it may be said that it is Jews who form the overwhelming majority of those who avail themselves of this provision, as by far the largest number of immigrants into Palestine are Jews. The position as regards naturalization would have been different had the policy of the Mandatory resulted in diverting to Palestine a flow of non-Jewish immigration, supposing such policy not to be inconsistent with the mandate. Then it could have been argued that the naturalization provisions of the Palestine Citizenship Order ought expressly to recognize the special position of Jewish immigrants in conformity with Article 7 of the mandate. Moreover, this Article stipulates that ‘there shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews,’ etc. ; it may be inferred from the words ‘framed so as to facilitate’ that no express mention has necessarily to be made of the privileged position accorded in this respect to Jews in Palestine, provided, of course, that the absence of such mention is not construed so as to affect the object aimed at in Article 7 of the mandate.

The second point, that of conditions of residence, is of

far greater practical importance. It may indeed be asked whether the condition of two years' residence—though not necessarily consecutive—can be regarded as forming part of the 'facilities' of naturalization stipulated in the above Article 7. But it must be borne in mind that, while on the one hand the Mandatory is to grant facilities of naturalization to Jews, on the other hand he has to assure himself that these Jews will take up their permanent residence in Palestine. It is in the interests of the national home itself that a provision to this effect has been inserted in the mandate, and this is the main reason why two out of the three conditions with which the prospective Palestinian has to comply are connected with residence; the first of them providing for some guarantee of stability in the past, and the other aiming at a similar guarantee for the future.

There is another provision in the Palestine Citizenship Order which illustrates how important the condition of residence is considered to be for purposes of Palestinian citizenship. Section 10, clause 1 of the Order provides that

'Where it appears to the High Commissioner . . . that the person to whom the certificate [of naturalization] is granted has, since the grant, been for a period of not less than three years ordinarily resident out of Palestine . . . the High Commissioner may, subject to the approval of one of His Majesty's Principal Secretaries of State, by order revoke the certificate, and the order of revocation shall have effect from such date as the High Commissioner may direct.'

Thus residence in Palestine is not only a condition of acquisition but also of retention of Palestinian citizenship. It is, however, to be observed that the character and extent of the condition of residence differ according to whether the issue is one of acquisition or of revocation of citizenship. In the first case, as we have seen, the

required residence is to be of two years' duration within the three years immediately preceding the application ; moreover, clause 5 of Section 7 of the Order provides that

' the High Commissioner may in any special case, if he thinks fit, grant a certificate of naturalization, although the two years' residence has not been within the last three years immediately preceding the date of the application.'

In the second case, the person whose citizenship may be revoked is to have been ' ordinarily resident ¹ out of Palestine ' for not less than three years, and even when this condition is fulfilled, the High Commissioner is not at liberty to act without referring the matter to one of His Majesty's Principal Secretaries of State.

No distinction is made in the Palestine Citizenship Order between born and naturalized Palestinian citizens. In virtue of Section 8

' a person to whom a certificate of naturalization is granted by the High Commissioner shall, subject to the provisions of this Order, be entitled to all political and other rights, powers and privileges and be subject to all obligations, duties and liabilities to which a Palestinian citizen is entitled or subject.'

This provision is of fundamental importance to those who may have to avail themselves of the naturalization clauses of the above Order, and goes far towards giving effect to the ultimate object of Article 7 of the mandate.

In conclusion it may be said that, on the whole, there seems to be nothing in the naturalization provisions of the Palestine Citizenship Order which can properly be considered inconsistent with Article 7 of the mandate.

¹ This expression is not quite clear, as the word 'ordinarily' may be taken both as an aggravating and an attenuating qualification of 'resident.' This may give rise to controversies and difficulties of interpretation,

especially if a comparison be made between the above expression and 'habitually resident' employed in Section 1 of the Order (see *infra*, National Status of the Inhabitants of Palestine, pp. 268-269).

The term ' facilities ' used in its wording with regard to the naturalization of Jews could never have meant that upon their arrival Jewish immigrants shall automatically become Palestinian citizens, although on the other hand a residence period of one year may be considered as fairly reasonable and adequate. Article 7, indeed, refers only to the intention to reside in Palestine in future, and the additional precaution taken by the Mandatory in requiring from the prospective citizen a two years' period of residence previous to his application, while not inconsistent with the above Article, may be regarded as somewhat excessive. On the other hand, it must be admitted that, in comparison with conditions of naturalization prevailing in most countries—especially the old countries and those that are practically closed to immigration—the conditions laid down in the above Order for the acquisition of Palestinian citizenship may be considered as ' facilities ' in the meaning of Article 7 of the mandate. The residence requirements are not intended to interfere with such rights as the mandate may have established in favour of a certain category of prospective citizens ; their object is mainly to give effect to the provisions of the above Article as regards residence, in the interest of the national home itself and the country as a whole.

PART II

THE MANDATE PROPER

THE MANDATE PROPER

OBLIGATIONS OF THE MANDATORY ARISING OUT OF THE MANDATE PROPER

Rights or Obligations?—The obligations assumed by Great Britain in its capacity as Mandatory for Palestine are embodied in the text of the mandate. They retain the character of obligations, even when they are expressly or implicitly referred to as rights. A right can be exercised or renounced *ad nutum*, whereas there can be no question of renouncing an obligation; being in the interest of a beneficiary, obligations are binding as long as the act or contract in which they are provided for remains in force. A mandatory Power is bound by the obligations it assumed in virtue of the provisions of the mandate so long as it retains its capacity of Mandatory.

A typical illustration of this remark can be found in Article 1 of the final draft of the mandate for Palestine,¹ providing that 'His Britannic Majesty shall have the *right* to exercise as Mandatory all the powers inherent in the government of a sovereign State, save as they may be limited by the terms of the present mandate.' In spite of its wording, this provision can hardly be considered as having conferred any right upon the Mandatory, since the latter was bound to exercise the above powers in virtue of the mandate and could not renounce them without denouncing the mandate itself. The case would have been different, of course, had the mandatory Power acquired sovereignty over the mandated territory, but opinion is practically unanimous

¹ *Cmd.* 1500 (1921), p. 7.

that, wherever sovereignty over mandated territories may be located, it does not reside in the Mandatory.¹

This view is strikingly corroborated by the above quotation, which indeed does not speak of sovereign rights of the Mandatory, but of 'the right to exercise as Mandatory all the powers inherent in the government of a sovereign State.' The possession of a right and the provisional exercise of powers inherent in such a right are two different things in law. The exercise of rights inherent in sovereignty by a mandatory Power can be compared, *mutatis mutandis*, to the exercise of rights inherent in ownership by a guardian or trustee. Such exercise means neither that the Mandatory as such is sovereign nor that the guardian or trustee is the real owner.²

The subsequent modification of the wording of Article 1 greatly strengthens the case for placing this construction upon it. This Article, as definitely drafted and adopted by the Council of the League of Nations, provides that 'The Mandatory shall have full powers of legislation and of administration, save as they may be limited by the terms of this mandate.' The modification seems to have been made mainly in order to avoid the possibility of ascribing to the Mandatory the possession of sovereignty, although, as we have seen, the final draft itself was far from suggesting that sovereignty resided in the Mandatory. Moreover, it was intended to bring the formula of the Palestine mandate into line with that of other mandates.

It may therefore be said in conclusion that the Mandatory, not being in possession of sovereign rights over the mandated territory entrusted to him, has there, strictly speaking, no other rights than those exception-

¹ As to the various theories concerning sovereignty over mandated territories, see J. Stoyanovsky, *op. cit.*, pp. 67-86.

² By 'real owner' is meant the possessor of the *jus utendi ac abutendi*, which the trustee—though having what English law calls 'legal ownership'—undoubtedly is not.

ally assigned in the mandate. As an example of such an exception, the right of passage which the Mandatory has acquired in virtue of Article 17, paragraph 3 of the Palestine mandate, may be cited.¹

Division of Part II.—The general obligations of the Mandatory resulting from the mandate properly speaking, *i.e.* from those provisions which are not directly connected with the national home policy, are based on the fundamental principles laid down in Article XXII of the Covenant, which constitutes, so to speak, the organic law of the mandates system.

The institution of mandates, as has been frequently pointed out, is in reality one of a double character: it is a guardianship or tutelage (*tutela*) in the relations between the Mandatory and the territory in which he exercises authority, and a mandate (*mandatum*) in the relations between the Mandatory on the one hand and both the League and its Members on the other. The obligations of the Mandatory thus fall into the two following categories:

- I. Obligations towards the territory and its inhabitants.
- II. Obligations towards the League and its Members.

I. OBLIGATIONS OF THE MANDATORY TOWARDS THE TERRITORY AND ITS INHABITANTS²

These obligations, as set out in the various provisions of the mandate, are connected with the

1. Government of Palestine.
2. Territorial Integrity, Defence and Public Order.
3. Public Finance.
4. Civil and Religious Rights and Interests.
5. International Status of Palestine.

¹ This is equally the case with Syria (Art. 2, para. 4 of the mandate).

² The terms 'inhabitants' and 'natives' are often used indiscrimi-

1. GOVERNMENT OF PALESTINE

Reference has already been made in the Introduction to the military administration in Palestine that lasted from the occupation of the country by the Egyptian Expeditionary Force in 1917 and 1918 up to July 1, 1920, when a civil administration was established. In its earlier stages this administration was semi-military in character, as far at least as its personnel was concerned ; it was set up, as has been pointed out, 'upon the foundations laid by the previous military administration.'¹

Moreover, in virtue of the general principles of international law, as has already been mentioned, Palestine was legally to keep the status of a territory under military occupation until such time as a valid peace treaty was concluded with Turkey. Consequently, it was the duty of the then prospective Mandatory to maintain, as far as possible, the *status quo* in Palestine, but in approving the mandate before the conclusion of such treaty the Council of the League of Nations eventually set aside these legal scruples on account of the practical difficulties and dangers for which they were largely responsible.

The mandate for Palestine, unlike the mandate for Syria and the draft mandate for Mesopotamia, contains no provision regarding the framing of an organic law by the Mandatory. Some such law had, however, to

nately to designate the local populations of colonies as well as of mandated territories. Palestine, however, seems to be in this respect in a somewhat special position, as to its population of 'natives' strictly speaking (composed mainly of Arabs) is to be added a new population of Jews, settling in the country in virtue of the national home policy. For the purposes of this policy they may have—as in fact they have—a distinct status as Jews, but from the point of view of

Palestine as a whole their status is one with that of all the other sections of the population. They are, therefore, included in the expression 'inhabitants of Palestine.'

This preliminary remark seems to be necessary in view of certain not wholly disinterested attempts to assimilate the position of Jews in Palestine to that of what is known in terms of colonial policy as 'white settlers' as opposed to 'natives.'

¹ Report on Palestine Administration, July 1920–December 1921, p. 3.

be enacted, and in fact it was even in preparation before the approval of the mandate by the League; it was actually promulgated on August 10, 1922 (under the name of The Palestine Order in Council, 1922¹) in pursuance of the above-quoted Article 1 of the mandate. The Order in Council provides for the composition and functions of the Executive, the Legislature and the Judiciary, and defines their respective competence and authority. As we shall see, however, part of the provisions of the Order, mainly those connected with the Legislative Council (Part III), were subsequently amended by The Palestine (Amendment) Order in Council, 1923.²

These two Orders have to be 'read and construed as one' (Article 1 of the amending Order).

The following three sections will be devoted to the examination of the main provisions of the above Orders:

- (1) The Executive.
- (2) The Legislature.
- (3) The Judiciary.

An Appendix will deal with the Relations of the Mandatory and the Administration of Palestine.

(1) THE EXECUTIVE

High Commissioner in Council.—The executive authority in Palestine is vested in the High Commissioner in Council, which means, according to Article 2 of the Order, 'the High Commissioner acting by and with the advice of the Executive Council,' the latter including the heads of the chief departments of the Government. The High Commissioner (who is also the Commander-in-Chief) is appointed by a Commission under His Majesty's Sign Manual and Signet (Article 4). The Commission is to be read and published in the presence of the

¹ Statutory Rules and Orders, 1922, No. 1282 (see Annexe II.).

² *Ibid.*, 1923, No. 619 (see Annexe II.).

Chief Justice of Palestine, who is to administer to the High Commissioner the Oath of Allegiance (Article 6). In case of succession to government, which may be caused by vacancy, incapability, etc., the Chief Secretary is, as a rule, to be appointed 'Administrator' according to the procedure laid down in Articles 4 and 6 (Article 7). When on temporary leave or absence, the High Commissioner may appoint his Deputy by an instrument under the Public Seal of Palestine (Article 8).

As regards the Executive Council, Article 10 of the Order provides that

'There shall be for the purpose of assisting the High Commissioner an Executive Council which shall be composed of such persons and constituted in such manner as may be directed by any instructions which may from time to time be addressed to the High Commissioner by His Majesty, under His Majesty's Sign Manual and Signet, and all such persons shall hold their places in the said Council during His Majesty's pleasure.'

Powers of High Commissioner.—The powers of the High Commissioner are mainly defined in Article 5 of the Order, which runs as follows :

'The High Commissioner shall do and execute in due manner all things that shall belong to the said office, according to the tenour of any Orders in Council relating to Palestine and of such Commission as may be issued to him under His Majesty's Sign Manual and Signet, and according to such instructions as may from time to time be given to him, for the purpose of executing the provisions of the mandate, under His Majesty's Sign Manual and Signet, or by Order of His Majesty in Council or by His Majesty through one of His Principal Secretaries of State, and to such laws and ordinances as are now or shall hereafter be in force in Palestine.'

Besides this general provision, special rights and

powers have been recognized to the High Commissioner ; they are mainly the following :

1. To appoint a Deputy High Commissioner, as we have already seen. This right has been exercised on various occasions, and it can be said that it is the established practice to appoint the Chief Secretary, although it seems that the High Commissioner's choice is not strictly limited by the Order. In virtue of Articles 14 and 15 of the Order, the High Commissioner may, subject to instructions, appoint or authorize the appointment of, dismiss or suspend ' any person holding any public office within Palestine.' Whether, and if so to what extent, this provision applies with regard to the members of the Executive Council is not quite clear, as the above-quoted Article 10 of the Order seems to suggest that in this respect the powers of the High Commissioner are more strictly defined. Among other appointments which the High Commissioner is empowered to make are those of government officers to be substituted for British consular officers for the purposes of the provisions of the Merchant Shipping Act, 1894, or any amending Act (Article 36).

2. ' The High Commissioner shall keep and use the Public Seal of Palestine for the sealing of all things whatsoever that shall pass the said Public Seal ' (Article 9).

3. ' The High Commissioner may, with the approval of a Secretary of State, by Proclamation divide Palestine into administrative divisions or districts in such manner and with such sub-divisions as may be convenient for purposes of administration, describing the boundaries thereof and assigning names thereto ' (Article 11 (1)). This provision has been applied up to now not less than three times. Upon the setting up of the civil administration Palestine was divided into four districts : Northern, Samaria, Jerusalem-Jaffa and Southern. In

virtue of a Proclamation gazetted on June 1, 1924,¹ the following districts were established: Northern, Jerusalem-Jaffa and Southern. This has again been modified by a Proclamation, gazetted on September 16, 1925, dividing Palestine into two districts: Northern and Jerusalem-Southern.² This tendency towards administrative centralization seems to have been largely prompted by financial considerations, but was presumably carried too far, since it has been found necessary by a subsequent measure³ to constitute a special division for Jerusalem. Palestine is, therefore, divided at present for the purposes of administration into the Northern District, the Southern District and the Jerusalem Division. In connection with the question of the administrative division of Palestine, it has to be mentioned that, in virtue of Article 86 of the Order, giving effect to Article 25 of the mandate, 'such parts of the territory comprised in Palestine to the east of the Jordan and the Dead Sea' are to be considered as not forming part of Palestine for administrative purposes. Subject to the provisions of the above Article, the High Commissioner is, however, responsible for the administration of Transjordan (Article 86 *in fine*).

4. The principle laid down in Article 12 of the Order that 'all rights in or in relation to any public lands'⁴ (paragraph 1) and 'all mines and minerals of every kind and description' (paragraph 2) 'shall vest in the High Commissioner,' is given effect to in the power accorded to him to 'make grants or leases of any such public lands or mines or minerals' (Article 13). Owing, however, to the vital importance of this matter, especially as far as public lands are concerned, the exercise of this right by the High Commissioner was made subject to

¹ O.G., No. 116, June 1, 1924.

Order in Council, 1922 (O.G., No. 190, July 1, 1927).

² *Ibid.*, No. 147, Sept. 16, 1924.

³ Proclamation under the Palestine

⁴ For the definition of this term see *supra*, Land Policy, p. 124.

instructions for the purpose of executing the provisions of the mandate (Article 13, paragraph 2 *in fine*). This seems to be a reference to Articles 6 and 11 of the mandate with regard to State and waste lands and to concessions respectively.

5. Article 16 of the Order assigns the High Commissioner the power to grant pardon 'to any offender convicted of any crime or offence in any Court or before any judge or magistrate within Palestine.' This right cannot be transferred by the High Commissioner to a Deputy he may appoint in virtue of Article 8 of the Order. On the various occasions of such appointments the power of pardon has in fact been expressly excluded from the competence of the Deputy. As regards death sentences, Article 48 of the Order provides that they 'shall not be carried into effect until confirmed by the High Commissioner.'

6. The legislative powers vested in the High Commissioner in virtue of Article 17 of the Order as amended by Article 3 of the Palestine (Amendment) Order in Council, 1923, will be dealt with in the following section concerning the Legislature. It is only to be pointed out here that certain acts, such as Proclamations, Regulations, Orders, Rules, etc., have always been considered within the competence of the High Commissioner.¹

¹ After stating that during the period of military occupation 'there was no exactitude in the terminology of legislation,' and that 'an enactment was indifferently called an Ordinance or a Public Notice, without any apparent distinction,' N. Bentwich continues: 'When the civil administration was established in July 1920 an attempt at differentiation was made. A measure which was submitted to the Advisory Council and made some substantial changes in the early Ottoman law, or introduced regulation or penalties in respect of a topic which was not covered by the Ottoman law, was entitled an Ordinance. On the other

hand, an enactment which was designed to be an application of the Ottoman law, or concerned some departmental matter, was normally entitled a Public Notice, while a body of Rules which applied in detail an Ordinance of the administration or an existing Ottoman law was entitled Regulations. There were, indeed, some lapses from these principles, but in general the legislation from July 1920 till the issue of the Palestine Constitution by the Order in Council of 1922 followed them' (*Legislation of Palestine, 1918-1925*, compiled by N. Bentwich, Attorney General of Palestine, vol. i., Introductory Note, p. iii),

Some are specifically referred to in the Order, but even previously, when the enactment of Ordinances was entrusted to the High Commissioner after consultation with the Advisory Council, special power was sometimes given to the High Commissioner acting alone to issue such Orders as might be necessary for the purposes of

- (1) carrying into execution the provisions of the Ordinance ;
- (2) interpreting any of these provisions ;
- (3) supplementing them in respect of any matter not specifically provided for.¹

Such Orders, however, cannot be considered as legislative acts strictly speaking, and most of the executive authorities of parliamentary Governments have been granted some such powers.

The most important provision connected with the legislative powers of the High Commissioner is the one embodied in Article 87 to the effect that

‘ the High Commissioner may by Proclamation in the Gazette ² at any time within one year from the date of the commencement of this Order, and provided he has previously obtained the approval of the Secretary of State, vary, annul or add to any of the provisions of this Order in order to carry out the purposes of the same, and may provide for any other matters necessary in order to carry into effect the provisions thereof.’

It was maintained that ‘ these powers of the High Commissioner render this Order in Council as if it had not been,’³ but, as was pointed out by the British

¹ This is an illustration provided by the Orthodox Patriarchate Ordinance, 1921 (*O.G.*, No. 50, Sept. 1, 1921).

² The Official Gazette of the

Government of Palestine.

³ Letter of the Palestine Arab Delegation to the Secretary of State for the Colonies, Feb. 21, 1922, *Cmd.*, 1700 (1922), p. 4.

Government, the above Article 87 (83 of the draft which was then under consideration) was 'of a purely temporary character,' and its provisions were 'intended to supply a simple method of remedying any inaccuracies of drafting which may appear when the Order is brought into active operation, and of explaining any provisions which may then appear to require further definition.'¹ It seems only natural, indeed, that such precautions should have been taken by the British Government, whose attitude towards any written Constitution can only be one of the greatest reserve.

7. With reference to such parts of the Foreign Jurisdiction Act, 1890, as in virtue of the Palestine Order in Council, 1922, are to be applied to Palestine, it is provided that 'the High Commissioner is hereby substituted for the Governor of a Colony or British Possession' (Article 35, (i)). It can hardly be maintained—though this has in fact been done—that by this provision 'Palestine is considered as a Crown Colony, and the High Commissioner as the Governor of a Colony or British Possession.'² The British Government has, indeed, pointed out that the above provision, as well as the other provisions of Part IV of the Order (Articles 35, 36 and 37), 'merely provide for the application of certain British statutes to Palestine, and do not in any way affect the status of that country.'³ The application of a British statute, whether colonial or not, to Palestine, no more affects the status of the latter than would the extension to Palestine of any treaty signed by Great Britain.⁴ Among the other statutes the application of which is partly or wholly extended to Palestine, mention should be made of the Merchant Shipping Act, 1894, and the Colonial Prisoners' Removal Act, 1884

¹ Letter of the Colonial Office to the Palestine Arab Delegation, March 1, 1922, *ibid.*, p. 10.

² *Ibid.*, p. 4.

³ *Ibid.*, p. 9.

⁴ See *infra*, International Status of Palestine, pp. 280-282.

(Articles 36 and 37 respectively).¹ In connection with the latter Act, and in virtue of the provisions of Articles 68, 69, 70, 71 and 78 of the Order, the High Commissioner is recognized as the supreme authority in matters of removal of prisoners or deportation of political offenders. It appears from the above-quoted correspondence that the British Government was ready to reconsider the provision embodied in Article 70 to the effect that 'an appeal shall not lie against an Order of deportation made under this Order,' on the condition, however, that 'some advance has been made towards a friendly understanding.'²

Such understanding not having been reached, the above provision remained unaltered, as it was thought necessary to arm the High Commissioner with extraordinary powers against all such offences as may possibly be committed in an atmosphere of political agitation.

8. The establishment of the various Courts in Palestine, both general and special (Land Courts, Tribal Courts, etc.), is to be prescribed 'by Order under the hand of the High Commissioner' (Articles 39, 40, 42 and 45). The procedure of the various Courts, including the Supreme Court established in virtue of Article 43, may be laid down by the Chief Justice 'with the approval of the High Commissioner' (Article 49), and it is the latter who alone can give the necessary written consent to enable an action to be brought against the Government of Palestine (Article 50, paragraph 1). The High Commissioner himself, his residence and property, whether official or unofficial,

¹ A special Order in Council subsequently extended to Palestine the application of Part II of the Administration of Justice Act, 1920, providing for 'the reciprocal enforcement of judgments in the United Kingdom and in other parts of His Majesty's Dominions.' The expression 'His Majesty's Dominions' is extended so

as to comprise the mandated territory of Palestine 'as if that territory were part of His Majesty's Dominions.' This last sentence should allay such doubts as have been expressed with regard to the status of Palestine (Statutory Rules and Orders, 1923, No. 647).

² *Cmd.* 1700 (1922), p. 10.

are immune from the jurisdiction of the Civil Courts (*ibid.*, paragraph 2).

9. As a corollary to the powers of the High Commissioner, Article 81 of the Order provides that

'all His Majesty's officers, civil and military, and all other inhabitants of Palestine are hereby required and commanded to be obedient, aiding and assisting unto the High Commissioner and to such person or persons as may from time to time, under the provisions of this Order, administer the Government of Palestine.'

(2) THE LEGISLATURE

We have seen that the mandate has given the Mandatory 'full powers of legislation . . . save as they may be limited by the terms of this mandate' (Article 1). Nothing in the provisions of the mandate for Palestine, unlike those of the other A mandates, refers to a national Legislature in and for Palestine, to which at least part of the legislative powers of the Mandatory would be delegated, subject to the latter's control and supervision. It has already been pointed out that the main object of the Mandatory, as it appears from the various official statements, in reserving to himself the legislative power in Palestine, was to secure a free hand in the execution of the provisions of the mandate. And when subsequently the Mandatory made an attempt to delegate part of his legislative powers to an organized body emanating from the inhabitants of Palestine, every precaution was taken in order to prevent any possible abuse of political concessions against the letter or the spirit of the mandate. However, the Mandatory's attempt failed. Already, during the informal discussion of the draft Constitution, which took place between the British Government and the Palestine Arab delegation,¹

¹ It has been clearly pointed out by the Mandatory that these were not negotiations, 'since no official machinery for representation has as yet been constituted' (*Cmd.* 1700 (1922), p. 5).

it appeared that no common basis could be found at the time with regard to the contested points. Although the discussion turned mainly upon such questions as the powers of the High Commissioner, the number of official or unofficial members on the proposed Legislative Council, etc., the main difficulty really lay in the clear intimation that all such powers as might be acquired in virtue of the new Constitution would be used by the representatives of the majority of the population against the fundamental principles of the mandate, mainly in regard to the provisions connected with the national home policy.

The Palestine Constitution was enacted and came into force on September 1, 1922. The elections to the Legislative Council were to take place during the last week of the following February (the period was subsequently extended to the first week in March), but there was a large measure of non-co-operation among the local population. According to the 'Papers relating to the elections for the Palestine Legislative Council, 1923,' this

'was due mainly to active agitation conducted by members of the Committee of the Palestine Arab Congress, but not a little to political apathy, to lack of confidence that representative persons would be elected, and to a feeling among the population that a Legislative Council would not bring any better Government or any better protection of their interests than that already afforded by the present administration.' ¹

The following May an announcement was published by the High Commissioner in which it was said, *inter alia* :

'... the people not having fully availed themselves of the opportunity offered to participate in the government of the country through elected representatives, His Majesty's Government have decided to suspend, for the time being, such part of the proposed Constitution as

¹ *Omd.* 1889 (1923), p. 7.

relates to the establishment of a Legislative Council, and to authorize the High Commissioner to act in the meantime in consultation with an Advisory Council as before.' ¹

The Palestine (Amendment) Order in Council, 1923, which had been previously issued, declared the above elections null and void and either repealed or suspended the application of various provisions of the Principal Order of 1922. In virtue of the amended Article 17, clause 2,

'from and after a date to be fixed by the High Commissioner in Executive Council, by Proclamation in the Gazette, there shall be constituted a Legislative Council in and for Palestine as in this Order provided and any advisory body then existing shall be dissolved. The powers of the High Commissioner as defined and limited by clause 1 of this Article [concerning legislation] shall continue in force until a Legislative Council as provided above shall have been duly constituted, when Articles 18 to 34 of this Order shall apply.'

The suspended Articles as well as the corresponding provisions of the amending Order will be dealt with under the following headings :

- (i) Constitution of the Legislature.
- (ii) Powers of the Legislature.

(i) *Constitution of the Legislature*

The draft Constitution ² provided that the Legislature or Legislative Council 'shall consist of 25 members in addition to the High Commissioner, of whom 10 shall be official members and 15 shall be unofficial members' (Article 19); of the latter 12 were to be elected and 3 nominated (Article 21). The High Commissioner was to exercise a 'casting vote in case of equality of votes.' The Executive was not to be responsible to the Legislature. The latter principle of non-responsibility of the Executive to the Legislature has been intro-

¹ *Ibid.*, p. 10.

² Not published.

duced in the Constitution as definitely adopted, which provides, however, for a majority of unofficial over official members. According to the suspended Article 19 of the Palestine Order in Council, 1922, 'the Legislative Council shall consist of 22 members in addition to the High Commissioner, of whom 10 shall be official members and 12 shall be unofficial members.' The former, enumerated in Article 20, are the persons for the time being exercising the functions of the respective offices of Chief Secretary, Attorney General, Treasurer, Inspector General of Police, Director of Health, Director of Public Works, Director of Education, Director of Agriculture, Director of Customs, Director of Commerce and Industry. As to the 12 unofficial members, they were to be elected in accordance with the Palestine Legislative Council Election Order, 1922¹ (enacted on the same day as the Constitution itself). This Order provides for primary and secondary elections (Article 3) according to the system which was in force under the Turkish *régime* and which seems to be the most practicable and appropriate in a country with a population of largely uneducated masses. Every male Palestinian over twenty-five years of age (except those who had lost their civil rights or had been declared bankrupt or placed under interdiction² or sentenced to imprisonment for more than one year) was entitled to vote at the primary elections (Article 4). No property qualification was thus required. The number of secondary electors (they were subject to the same qualifications and disqualifications as the primary electors—Article 10) was to be determined in each voting area 'on the basis that every 200 primary electors shall elect one secondary elector' (Article 5).

¹ Statutory Rules and Orders, 1922, No. 1283.

² By judgment of a Civil Court which deprives the person concerned

of the administration of his own property on account of '*imbécillité*,' '*démence*' or '*fureur*' (Art. 489 of the French Civil Code), and in certain similar cases.

In virtue of Article 12

'the secondary electors shall be formed into 12 electoral colleges according to the religious community to which they belong ; that is to say, there shall be separate electoral colleges for Moslems, Christians and Jews. . . . The number of colleges to be allotted to each religious community shall be determined by the High Commissioner, having regard to the numbers of secondary electors belonging to the several communities, provided that there shall not be less than two Christian and two Jewish colleges. Each electoral college shall elect one member.'

To membership in the Legislative Council every male Palestinian who has completed his thirtieth year shall be eligible (Article 15) unless he is under one of the above disqualifications, or 'holds any office of profit under the Palestine Government' (Article 15, paragraph *f*), or 'has any direct or indirect pecuniary interest in any agreement with the Public Service of Palestine' (Article 15, paragraph *g*). These provisions have been inserted with a view to securing the independence of the unofficial members *vis-à-vis* the Administration.

We have seen, however, that the first elections held under the Palestine Legislative Council Election Order, 1922, had to be declared null and void on account of large abstentions on the part of the Arab population.¹

(ii) *Powers of the Legislature*

The suspended Article 18 of the Palestine Order in Council, 1922, referred to as the Principal Order, provided that

'the Legislative Council shall have full power and authority, without prejudice to the powers inherent in, or reserved by this Order to, His Majesty, and subject always to any conditions and limitations prescribed by

¹ According to the High Commissioner's Report, 213 secondary electors were elected out of a total of

809 who should have been elected had full nominations taken place. For details see *Cmd. 1889* (1923), pp. 7-8.

any Instructions under the Sign Manual and Signet, to establish such Ordinances as may be necessary for the peace, order and good government of Palestine, provided that no Ordinance shall be passed which shall restrict complete freedom of conscience and the free exercise of all forms of worship, save in so far as is required for the maintenance of public order and morals ; or which shall tend to discriminate in any way between the inhabitants of Palestine on the ground of race, religion or language.'

As, however, the constitution of a Legislative Council had to be postponed, the above powers of legislation were assigned, in virtue of the amended Article 17, clause 1, to the High Commissioner, 'until a Legislative Council . . . shall have been duly constituted' (Article 17, clause 2 *in fine*). In addition to the reservations included in the above-quoted provisions, the legislative authority of the High Commissioner has been limited as follows :

1. 'No Ordinance shall be promulgated by the High Commissioner until he has consulted the Advisory Council' (Article 17, clause 1, paragraph *b*). Owing to the abstention, however, of the nominated Arab members, the Advisory Council was constituted, by Proclamation under the Palestine (Amendment) Order in Council, 1923, with the following official members: Chief Secretary, Attorney General, Treasurer, Inspector General of Police and Prisons, District Governor Jerusalem-Jaffa,¹ Directors of Agriculture, Customs and Trade, Education, Health and Public Works.² Thus the promulgation of the Palestine Constitution has, in fact, resulted in the substitution of an official Advisory Council for the unofficial one which had been in existence from October 1920.³
2. 'No Ordinance shall be promulgated which shall be in

¹ Subsequently the Jerusalem-Southern District.

² O.G., No. 104, Dec. 1, 1923.

³ The unofficial Advisory Council was composed of ten nominated members, of whom four were Moslems, three Jews, and three Christians.

any way repugnant to or inconsistent with the provisions of the mandate' (Article 17, clause 1, paragraph *c*). A provision to the same effect is to be found in Article 18, paragraph 2 of the Principal Order, 1922.

3. 'No Ordinance which concerns matters dealt with specifically by the provisions of the mandate shall be promulgated until a draft thereof has been communicated to a Secretary of State and approved by him, with or without amendment' (*ibid.*). This provision has been substituted for the one embodied in Article 26 of the Principal Order (see below) concerning reserved Ordinances.
4. 'No Ordinance shall be promulgated unless a draft of the same shall first have been made public for one calendar month at the least before the enactment thereof, unless immediate promulgation shall, in the judgment of the High Commissioner, be indispensably necessary in the public interest' (Article 17, clause 1, paragraph *d*). No such publication was deemed necessary in the Principal Order, as under its provisions Ordinances were to be enacted by a body comprising representative elements of the local population.

The provisions of the Principal Order regarding the relations between the High Commissioner and the Legislative Council cannot naturally become effective until such a Council is constituted. Mention should, however, be made of these provisions, as they still form part of the Palestine Constitution, and all that the amending Order of 1923 did was merely to suspend their application. The following are the main provisions governing the relations of the High Commissioner and the Legislative Council :

1. In virtue of Article 22 'the High Commissioner may at any time by Proclamation prorogue or dissolve the Council. The High Commissioner shall dissolve

the Council at the expiration of three years from the date of the first meeting thereof.' Although, as appears from the preliminary documents, it had been intended to provide that the High Commissioner should call a new Council within a stated time,¹ no provision to such effect has been inserted in the Order.

2. Article 24 provides that 'no Ordinance shall take effect until either the High Commissioner shall have assented thereto and shall have signed the same in token of such assent, or until the assent of His Majesty thereto has been given by Order in Council or through a Secretary of State.' Although it has been pointed out that this provision does not give to the High Commissioner unrestricted right to veto any measure passed by the Council,² he has been granted discretionary powers, subject to certain limitations, with regard to granting or refusing his assent to Ordinances (Article 25). However, in virtue of Article 27 'His Majesty reserves to himself the right to disallow an Ordinance to which the High Commissioner has assented within one year,' etc.
3. The main limitation of the power of veto given to the High Commissioner is embodied in Article 26 of the Order, providing that 'the High Commissioner may reserve for the signification of the pleasure of His Majesty any Ordinance passed by the Legislative Council, and shall in any case so reserve any Ordinance which concerns matters dealt with specifically by the provisions of the mandate.' Care was taken to state that the second part of this provision 'has been expressly inserted in the draft Order to meet the peculiar circumstances of Palestine.'³
4. Article 28, dealing with financial measures, provides that 'no vote, resolution or Ordinance for the appropriation of any part of the public revenue, or for the imposition of any tax or impost, shall be

¹ *Cmd.* 1700 (1922), pp. 3 and 9.

² *Ibid.*, p. 9.

³ *Ibid.*

proposed except by the High Commissioner, or by his direction.' In virtue of this provision the Legislative Council seems to have been deprived not only of the right to initiate, but also to amend, any financial or fiscal measures. The term 'proposed' was apparently used with a view to including both. In limiting the powers of the Legislative Council in matters of public finance the above Article mainly intended, as it seems, to prevent a situation from arising in which a majority of the members on the Council would combine for suppressing such credits or expenditure as might be necessary in the interest of the country or for the purpose of carrying out certain provisions of the mandate. Public finance, indeed, has proved to be one of the best weapons in the hands of legislative bodies for political ends.

5. In virtue of Article 29 the High Commissioner is to be the President of the Legislative Council. In his absence this function is to be carried out by the Chief Secretary, and in the absence of the latter by 'some member elected by the Council.' The President or the presiding member is given a casting vote in case of equality of votes (Article 32).

These are the main provisions embodied in the Palestine Constitution with regard to the powers of the Legislature. Both from these provisions and those relating to the constitution of the Legislature it clearly appears that the main preoccupation of the Mandatory was to take all necessary measures and precautions in order that no possible conflict should arise between the execution of the mandate and the working of the Constitution. This is what chiefly explains, as we have seen, the limited powers which it was considered possible to grant to the proposed Legislative Council. The necessity of the High Commissioner's assent to Ordinances, the reservation of Ordinances and their possible disallowance, as well as various matters of procedure, such as the establishing

of a quorum of 10 members (Article 30),¹ tend to the same effect. The position of the Mandatory in connection with the whole question of the Palestine Constitution may be summed up in the following quotation :

‘ His Majesty’s Government . . . consider it necessary to adopt the constitutional procedure which experience in all parts of the British Empire has shown to be the most practicable and convenient method of combining a large measure of popular representation with the necessary degree of control to ensure that the policy of the Government is not thereby stultified.’²

There is ground to believe, however, that part at least of the above precautions were rendered indispensable by the attitude adopted by certain sections of the population towards the provisions of the mandate.

(3) THE JUDICIARY

In virtue of Article 9 of the mandate ‘ the Mandatory shall be responsible for seeing that the judicial system established in Palestine shall assure to foreigners,³ as well as to natives, a complete guarantee of their rights.’ This Article, as well as the provisions embodied in the Palestine Constitution with a view to carrying it into effect, will be dealt with under the following headings :

- (i) Judicial System of Palestine.
- (ii) Personal Status of Palestinian Citizens.
- (iii) Condition of Foreigners in Palestine.

(i) *Judicial System of Palestine*

In pursuance of the above provision of the mandate the Palestine Order in Council, 1922, provided for the establishment of a complete judicial system, with its special law and its own Courts. The latter may be

¹ This means that only the official members on the Legislative Council may validly proceed with the despatch of business.

² *Cmd.* 1700 (1922), p. 8.

³ The reference to foreigners in Art. 9 of the mandate is to be read together with the provisions of Art. 8 regarding the suspension of capitulations in Palestine during the mandatory régime.

divided into *General Courts*, whose jurisdiction extends to the whole country and embraces all civil and criminal matters, and *Special Courts*, with a jurisdiction limited either in area or in nature.

A. The GENERAL COURTS provided for in the above Order are the following :

1. *Magistrates' Courts*, which in virtue of Article 39 'shall be established in each District and Sub-District as may be prescribed from time to time by Order under the hand of the High Commissioner.' The jurisdiction of these Courts is based on the provisions of the Ottoman law (Magistrates' Law of 1913) and the amending Ordinances.

2. *District Courts*, to be equally established by the High Commissioner in the various districts. According to Article 40 these Courts exercise jurisdiction

(1) As a Court of First Instance :

(a) In all civil matters not within the jurisdiction of the Magistrates' Courts in and for that district.

(b) In all criminal matters which are not within the jurisdiction of the Court of Criminal Assize ;

(2) As an Appellate Court from the said Magistrates' Courts, subject to the provisions of any Ordinances or Rules.

3. *Court of Criminal Assize*, provided for in Article 41, which 'shall have exclusive jurisdiction with regard to offences punishable with death, and such jurisdiction with regard to other offences as may be prescribed by Ordinance.'

4. *Supreme Court*, which in virtue of Article 43 is to exercise jurisdiction

(1) As a Court of Appeal, 'to hear appeals from all judgments given by a District Court in first instance or by the Court of Criminal Assize or by a Land Court' (paragraph 1) ;

(2) As a High Court of Justice, 'to hear and determine such matters as are not causes or trials, but

petitions or applications not within the jurisdiction of any other Court and necessary to be decided for the administration of justice' (paragraph 2).¹

Article 44 provides that

'in civil matters when the amount or value in dispute exceeds £E500 an appeal shall lie from the Supreme Court to His Majesty in Council. Every appeal shall be brought within such time and in such manner as may be prescribed by any rules of procedure made by His Majesty in Council.'

It is in pursuance of this provision that the Palestine (Appeal to Privy Council) Order in Council, 1924,² has been enacted, prescribing in detail the rules of procedure and the conditions of appeal from the Supreme Court of Palestine to the Judicial Committee of the Privy Council. The Order makes a distinction between judgments referred to in the above-quoted Article 44 and other judgments. In the first case the appeal from the Supreme Court to the Judicial Committee is 'as of right'; in the second it is 'at the discretion of the Court' and is permitted if in the opinion of the latter 'the question involved in the Appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council for decision' (Article 3, paragraphs *a* and *b*).

The institution of appeal from the Supreme Court of Palestine to the Judicial Committee of the Privy Council gives an additional guarantee to individual litigants in the event of large interests being involved, and to the country as a whole when legal or constitutional questions of general or public importance are to be decided upon.

¹ In this capacity 'the Supreme Court has been vested with the power to check abuse of authority by the Executive through the introduction of remedies that correspond with the English writs of *Habeas*

Corpus and *Mandamus* (N. Bentwich, *The Legislation of Palestine, 1918-1925*, in *J. C. L.*, vol. viii. part i. (Feb. 1926), p. 14; see also *ibid.*, part iii. (Aug. 1926), p. 228).

² *O. G.*, No. 129, Dec. 15, 1924.

It is hardly necessary to add that such appeals are provided for in the interests of 'good government,' and do not involve any more reference to the question of sovereignty than does the recognition in the Palestine Constitution of legislative powers to His Majesty in Council. The fact that Palestine shares the benefits of an institution which equally applies to the British dominions and colonial possessions does not affect in the least the special status of the former as a mandated territory. The Palestine (Appeal to Privy Council) Order has merely adapted a given part of the British Constitution to the principles of the mandates system as applied in Palestine.

B. The SPECIAL COURTS, as provided for in the Palestine Order in Council, are the following :

1. *Land Courts*.—These Courts were originally set up, as we have seen, for the purpose of definitely establishing all rights and titles to immovable property in Palestine—a matter in regard to which a great deal of uncertainty and confusion resulted from the change of *régime*. Article 42 of the Order gives them a permanent character, providing that such Courts may be established by the High Commissioner from time to time 'for the hearing of such questions concerning the title to immovable property as may be prescribed.'

2. *Tribal Courts*, provided for in Article 45 of the Order, mainly for the district of Beersheba (southern Palestine) where tribal life and custom largely prevail. The High Commissioner is given the power to decide in what other tribal areas such Courts are to be established. As to the law to be applied by these Courts, it may be tribal law and custom 'so far as it is not repugnant to natural justice and morality' (Article 45 *in fine*). This reservation is intentionally vague, but it may be assumed that with the development of the country and its inhabitants there will be a growing tendency gradually to extend its interpretation so as to bring the law of the above Courts—if

they are still deemed necessary—up to the general level of elementary justice and morality as understood in the more civilized countries.

3. *Religious Courts.*—These Courts form by far the most important category of Special Courts, and their establishment, as we shall see, is due to a special provision of the mandate itself. Three groups of Religious Courts have been provided for in the Order, one for each of the main religious communities in Palestine—Moslem, Jewish and Christian. According to Article 56, ‘the judgments of the Religious Courts shall be executed by the process and offices of the Civil Courts.’ Their jurisdiction, its scope and extent, will be dealt with in the following section concerning the personal status of Palestinian citizens.

Law to be applied in the Courts of Palestine.—In virtue of Article 46 of the Palestine Order in Council the law to be applied in the various Courts of Palestine (except the Tribal Courts and the Religious Courts) is the following :

1. ‘The Ottoman law in force in Palestine on 1st November, 1914, and such later Ottoman laws as have been or may be declared to be in force by Public Notice.’

2. ‘Such Orders in Council, Ordinances and Regulations as are in force in Palestine at the date of the commencement of this Order, or may hereafter be applied or enacted.’

3. The common law and the doctrines of equity in force in England ‘so far only as the circumstances of Palestine and its inhabitants and the limits of His Majesty’s jurisdiction permit, and subject to such qualification as local circumstances render necessary’ (Article 46 *in fine*).¹

¹ According to N. Bentwich, ‘the Ottoman law which was in force at the outbreak of the war remains the basis of the legal system of the country [Palestine]. . . . While the principal parts of the Ottoman administrative law have been or are

being rapidly replaced, the Ottoman Codes of civil law, civil procedure, commercial law and penal law have remained in operation, with slight amendment’ (*Legislation of Palestine, 1918-1925*, Introductory Note, pp. iv-v).

(ii) *Personal Status of Palestinian Citizens*

Article 9, paragraph 2 of the mandate provides that

‘Respect for the personal status of the various peoples and communities and for their religious interests shall be fully guaranteed. In particular, the control and administration of Wakfs shall be exercised in accordance with religious law and the dispositions of the founders.’

The existence of a close connection between personal status and religious interests is suggested in the wording of this Article, and the Palestine Order in Council has given practical effect to the above provision in Article 51, which recognizes the jurisdiction of the Moslem, Jewish and Christian Religious Courts in matters relating to the personal status of members of their respective communities. These matters comprise

‘suits regarding marriage or divorce, alimony, maintenance, guardianship, legitimation and adoption of minors, inhibition from dealing with property of persons who are legally incompetent, successions, wills and legacies, and the administration of the property of absent persons.’

The Moslem Religious Courts have been granted, in virtue of Article 52,

1. ‘Exclusive jurisdiction in matters of personal status of Moslems’ in accordance with the pre-existing law, as subsequently amended by any Ordinance or Rules.

2. ‘Exclusive jurisdiction¹ in cases of the constitution or internal administration of a Wakf constituted for the benefit of Moslems before a Moslem Religious Court.’

No distinction is made in Article 52 of the Order between Palestinian and foreign Moslems, and Article 64, as we shall see, confirms the rule that all Moslems in Palestine, whether Palestinians or not, are exclusively

¹ Subject to the powers assigned to the Supreme Council for Moslem Religious Affairs established by

Order of December 20, 1921 (*O.G.*, No. 58, Jan. 1, 1922).

justiciable of the Moslem Religious Courts in all matters of personal status, as defined above.

This is, however, not the case with regard to either the Jewish or the Christian Religious Courts. Articles 53 and 54 of the Order dealing with the jurisdiction of these Courts respectively provide that they shall have

1. 'Exclusive jurisdiction in matters of marriage and divorce, alimony and confirmation of wills of members of their community other than foreigners as defined in Article 59.'¹ In virtue of Article 65, paragraph 2, 'the Courts of the religious communities other than the Moslem Religious Courts shall not have power to grant a decree of dissolution of marriage to a foreign subject.'

2. 'Jurisdiction in any other matter of personal status of such persons, where all the parties to the action consent to their jurisdiction.' In the absence of such consent, the only competent Courts are the Civil Courts (Article 47). In this case, therefore, the jurisdiction of the Jewish and Christian Religious Courts—unlike that of the Moslem Courts—is not exclusive. On the other hand, in virtue of Article 65 foreigners may also consent 'to such matters being tried by the Courts of the religious communities having jurisdiction in like matters affecting Palestinian citizens.'

3. 'Exclusive jurisdiction over any case as to the constitution or internal administration of a Wakf or religious endowment constituted before the Rabbinical Court according to Jewish law' (Article 53).² With regard to Wakf or religious endowment, specifically mentioned in the mandate, the Religious Courts of the respective communities have all been equally given exclusive jurisdiction.

Article 55 of the Order provides for cases of conflicts

¹ See *infra*, pp. 194-195.

² '... before the Religious Court

according to the religious law of the community, if such exists' (Art. 54).

of law and jurisdiction ; it distinguishes two categories of such cases :

‘Where any action of personal status involves persons of different religious communities.’ In this case ‘application may be made by any party to the Chief Justice who shall, with the assistance, if he thinks fit, of assessors from the communities concerned, decide which Court shall have jurisdiction.’ It seems that for the guidance of the Chief Justice certain general principles might have been laid down in the Order upon such broad lines as have been universally adopted for the purpose of dealing with questions of conflict of laws.

‘Whenever a question arises as to whether or not a case is one of personal status within the exclusive jurisdiction of a Religious Court.’ In this case the establishment by Ordinance of a Special Tribunal is provided for.¹

Finally, Article 57 provides that

‘subject to the provision of any Ordinance or Order establishing a Supreme Council for Moslem Religious Affairs, the constitution and jurisdiction of Religious Courts established at the date of this Order may be varied by Ordinance or Order of the High Commissioner.’²

This is another instance in which it has been deemed necessary to treat the Moslem religious interests on a special footing as compared with those of the Jewish and Christian communities. The reason is to be found in the fact that religious precepts and conceptions seem to be more at the basis of the organization of the Moslem

¹ This was done by the Courts Ordinance, 1924, providing in Art. 8 that ‘the Special Tribunal referred to in Article 55 of the Palestine Order in Council, 1922, shall consist of two British judges of the Supreme Court and the President of the highest Court in Palestine of any religious community, which is alleged by any party to the action to have exclusive jurisdiction in the matter, or a judge appointed by such Presi-

dent. The Chief Justice, or, in his absence, the senior British judge of the High Court, shall preside over the tribunal’ (*O.G.*, No. 117, June 15, 1924).

² As far as the Jewish Religious Courts are concerned, their constitution and jurisdiction have been defined in the Jewish Community Regulations (*O.G.*, No. 202, Jan. 1, 1928).

community than of either the Jewish or the Christian. That is why *all* matters of personal status involving Moslems in Palestine are under the exclusive jurisdiction of the Moslem Religious Courts, while only a few are exclusively under the jurisdiction of the Religious Courts of the other communities. That is also why *all* Moslems in Palestine, whether natives or foreigners, are exclusively subject to the jurisdiction of their Religious Courts in matters of personal status, while foreign Jews or Christians are, in such matters, subject to the jurisdiction of their respective Religious Courts only with their own consent.

(iii) *Condition of Foreigners in Palestine : Suspension of the Capitulatory Régime*

The status of foreigners in Palestine has been completely altered as a result of the application of the mandates system to the territory. As a part of the Ottoman Empire, Palestine had been previously subjected to the *régime* of extraterritoriality known as 'capitulations' ¹ which placed the foreigner, national of a beneficiary State, in a privileged position in respect of diplomatic protection, immunities from local jurisdiction, taxation and so forth. The *régime* of capitulations, however, seems to have been considered either inconsistent with or unnecessary under the mandates system which placed Palestine under the authority and control of a European Power ; and it has accordingly been provided in the mandate that ' the privileges and immunities of foreigners, including the benefits of consular jurisdiction and protection as formerly enjoyed by capitulation or usage in the Ottoman Empire, shall not be applicable in Palestine ' (Article 8, paragraph 1). It appears to have been the intention of the Mandatory to secure the

¹ With regard to the capitulatory *régime*, its origin and nature, its history and content, see among

others, L. E. Thayer, *The Capitulations of the Ottoman Empire*, in *A.J.*, vol. xvii. (1923), pp. 207-233.

definite abolition of the *régime* of capitulations in Palestine, and the words used in the draft mandate instead of 'shall not be applicable in Palestine' were 'are definitely abrogated in Palestine.' This wording, however, was amended in the final stages of the draft, and a second paragraph was added to the effect that

'Unless the Powers whose nationals enjoyed the aforementioned privileges and immunities on August 1st, 1914, shall have previously renounced the right to their re-establishment, or shall have agreed to their non-application for a special period, these privileges and immunities shall, at the expiration of the mandate, be immediately re-established in their entirety or with such modifications as may have been agreed upon between the Powers concerned.'

Whatever may be said in favour of this provision from the point of view of the interested Powers, it seems to be wholly incompatible with the underlying principles and the ultimate object of the mandates system as a whole. The application of the latter is not to come to an end in any given territory before it has been clearly established that the territory in question is 'able to stand alone,' i.e. to conduct its own affairs, including the administration of justice as well as the general government of the country. It is therefore hardly consistent that, upon being recognized as able to stand alone, Palestine should be subjected to the very *régime* which implies incapacity, as far at least as the administration of justice is concerned.

In such circumstances all that the Mandatory can do—and the wording of Article 8, paragraph 2, seems to point to this—is to secure, if possible, the consent of the interested Powers to the definite abrogation of their capitulatory rights in Palestine, the exercise of which they have only agreed to suspend during the operation of the mandate. The conclusion of special agreements

to this effect may ultimately result in obviating the unfortunate effect which the re-establishment of capitulations is bound to have upon the development of a self-governing community in Palestine.

The non-application of the *régime* of capitulations during the mandate period allowed of the following provision being inserted in the Palestine Order in Council, 1922: 'The Civil Courts . . . shall, subject to the provisions of this part of the Order, exercise jurisdiction in all matters and over *all* persons in Palestine' (Article 38). The jurisdiction of the Civil Courts over foreigners—subject to certain conditions—has been expressly provided for (Article 58), but this does not mean that the same treatment is actually reserved in this respect to foreigners and Palestinians alike. Indeed, in pursuance of Article 9, paragraph 1 of the mandate, specifically referring to the rights of foreigners which the Mandatory is to safeguard, a somewhat special *régime* has been set up in favour of a certain category of foreigners. For the purpose of the provisions dealing with the administration of justice, the expression 'foreigner' means, in the words of Article 59 of the Order, 'any person who is a national or subject of a European or American State or of Japan.'¹ Expressly excluded from the term 'foreigner' are (1) 'native inhabitants of a territory protected by or administered under a mandate granted to a European State'; (2) 'Ottoman subjects'; and (3) 'persons who have lost Ottoman nationality and have not acquired any other nationality.' To these may be added nationals or subjects of a number of States which

¹ It has been pointed out that 'the definition is clearly intended to include all foreigners (with the addition of Japanese) who previously enjoyed privileges under the capitulations, either as being subjects of States possessing capitulations or as

being foreigners protected by such States' (F. M. Goadby, *The Present Situation with regard to the Privileges of Foreigners in the Near East*, in *J.C.L.*, vol. vi. part iv. (Nov. 1924), p. 267).

have to be inferentially excluded as not being either 'of a European or American State or of Japan,' such as Egyptian subjects, Chinese, Abyssinian, etc. Some doubt may exist as to the status of natives of European colonies residing in Palestine. It all depends on the interpretation which will be given, when the case arises, to the above expressions, 'national or subject' on the one hand and 'protected by' on the other. If the above category of persons are considered as being included in the expression 'national or subject'—and the word 'subject' may well have been intended for this purpose—then they will enjoy such treatment as has been granted to foreigners in Palestine; if, however, the expression 'protected by' is interpreted not in its technical sense of natives of a Protectorate but in the larger sense, then natives of European colonies will be excluded from the term 'foreigner' for the purposes of this section of the Palestine Order. It may be pointed out that it is at least unlikely that a native of Kenya or Madagascar, for instance, should be treated for the above purposes as a European, while natives of Syria or even of Egypt are not.¹

The special judicial privileges granted to foreigners, as defined above, in the Palestine Order are based on the principle that the foreigner has a right to claim—after proving that he is a foreigner within the meaning of the above Article 59—that the Court to whose jurisdiction he is subject shall be composed, according to the nature of the case, either of a British magistrate or of a majority of British judges, who thus take the place of the consular magistrates provided for in the capitulations. In criminal matters a foreigner has the right to claim trial

¹ According to F. M. Goadby, 'natives of British India proper (i.e. native inhabitants of other than the Indian Native-States) are clearly foreigners.' And so are in his opinion 'British subjects from any

part of the world . . . whether they belong to a European part of the Empire or not, e.g. Maltese, Cypriot, South Africans, West Africans, West Indians, Australians, etc.' (*ibid.*, p. 268).

—if the offence of which he is accused is punishable with more than fifteen days' imprisonment or a fine exceeding £E5—by a British magistrate. If tried by a Palestinian magistrate—in case of smaller offences—he has always the right to appeal to the District Court (Article 60). In offences of a graver character which are not triable by a magistrate he is entitled to claim that he be interrogated, or that a warrant of search of his house be issued, by a British magistrate (Article 61). In case of a foreigner committed for trial before the District Court or the Court of Criminal Assize, he may claim 'that the Court shall contain a majority of British judges' (Article 62). This provision has been amended by a subsequent Proclamation¹ and reads now ' . . . that the Court shall consist of a single British judge or contain a majority of British judges.' In civil cases the foreigner has the right to claim that at least one member of the District Court (whether in first instance or on appeal) shall be a British judge (Article 63). In civil and criminal cases which come before the Supreme Court in its appellate capacity he may claim that the Court shall contain a majority of British judges (*ibid.*). In contentious matters affecting the personal status of foreigners (other than Moslems) the competent Court is the District Court constituted by the British president sitting alone or—if the foreigner is not a British subject—with the possible addition of an assessor representing the Consulate of the foreigner; such assessor is always to be invited in a case of appeal, and the law to be applied is the personal law of the nationality of the foreigner concerned (Article 64). We have seen, however, that in matters of personal status foreigners are always entitled to refer their case to the Religious Courts of their respective communities, the only restriction, if they choose to do so, being that no decree or dissolution

¹ O.G., No. 91, May 15, 1923.

of marriage can be granted by Religious—other than Moslem—Courts. Non-contentious measures relating to the personal status of foreigners are left in the hands of the respective Consuls (Article 67). Special regulations have been issued by the High Commissioner under this provision ‘concerning the powers of Consuls in relation to personal status of nationals of their State.’¹

APPENDIX : RELATIONS OF THE MANDATORY AND THE PALESTINE ADMINISTRATION

The relations between the Mandatory for Palestine, *i.e.* His Britannic Majesty, and the Palestine Administration have not been dealt with in the mandate, and it is only by inference that some light can be thrown upon the matter. The various provisions of the mandate dealing with the obligations assumed by Great Britain in Palestine refer, at first sight indiscriminately, to ‘the Mandatory’ or to ‘the Administration of Palestine’ as being responsible for carrying these obligations into effect. But a comparison between those provisions which mention the Mandatory and those that speak of the Administration of Palestine seems to suggest that the former is mentioned in connection with the general or fundamental principles embodied in the mandate or where questions of international character are involved, while the Administration of Palestine is referred to when it is a matter of giving effect to such obligations as may derive from the above principles or in questions of mainly local concern. This is however by no means a definite rule; it merely indicates a tendency. Thus it is ‘the Mandatory’ who is entrusted with the mandate itself (preamble), or is given ‘full powers of legislation and of administration’ (Article 1), or is responsible for

¹ *O.G.*, No. 80, Dec. 1, 1922.

the Jewish national home policy as a whole and the safeguarding of the civil and religious rights of the inhabitants (Article 2); while it is 'the Administration of Palestine' which is to co-operate with the Jewish agency (Article 4), or to give effect to the immigration policy (Article 6), or to deal with concessions, etc. (Article 11). Thus also it is 'the Mandatory' who is responsible for the territorial integrity of Palestine (Article 5), for its foreign relations (Article 12), and for such fundamental principles as freedom of conscience (Article 15) and equality of treatment (Articles 18 and 21); while 'the Administration of Palestine' is to organize the defence of the country (Article 17), and to recognize the holy days of its respective communities (Article 23). On the other hand, while it was the Administration of Palestine which the mandate held responsible for enacting a nationality law, it was the Mandatory, *i.e.* the British Government, who enacted it in the form of an Order in Council. This seems, indeed, to have been the only proper course to follow, since the Palestine nationality law was to apply provisions of the Treaty of Lausanne which were exclusively within the competence of the British Government.

The above general lines along which the mandate seems to have divided the authority between the Mandatory and the Administration of Palestine have been followed and given effect to in the Palestine Constitution, as may be traced through various provisions of the Palestine Order in Council, 1922. In addition to 'instructions' and 'directions' which the High Commissioner is to receive from the British Government in all vital matters, the principle of reserved legislation, as we have seen, has been adopted in 'matters dealt with specifically by the provisions of the mandate' (Article 26 of the Order), and direct legislation by the Mandatory has been provided for in the following terms :

‘ There shall be reserved to His Majesty, His heirs and successors, the right, with the advice of His or Their Privy Council, from time to time to make all such laws or ordinances as may appear to Him or Them necessary for the peace, order and good government of Palestine in accordance with the mandate conferred on Him ’ (Article 89 of the Order).

However, direct legislation by means of Orders in Council or Acts of Parliament forms the exception rather than the rule, and the underlying principle which the Palestine Constitution has adopted is based on the autonomy of the Palestine Administration qualified by permanent and close supervision on the part of the Mandatory. The present constitution of the Palestine Administration matters but little from this point of view ; although in its present form it is mainly vested in the person of the High Commissioner, it is gradually to be transferred to the local population and constitutes as such the nucleus of the future autonomy of the country. In virtue of Article 3 of the mandate ‘ the Mandatory shall, so far as circumstances permit, encourage local autonomy,’ and inasmuch as the Palestine Administration protects the interests and safeguards the rights of the local population—even if as yet it does not represent it politically—it may be said that any extension of powers granted to the Administration, within the limits of the mandate, is actually a furtherance of local autonomy. Those who take the opposite view seem to consider the Administration of Palestine merely as an agent of the Mandatory ; and although there is much to justify this view in the present Constitution, it is to be borne in mind that the Administration is equally acting on behalf of the local inhabitants and in their interests. It is mainly in its capacity as such that the Administration of Palestine, as distinguished from the Mandatory, is referred to in the

various provisions of the mandate. The control exercised by the Mandatory over the Administration is not so much based on the principles of agency as deriving from the direct responsibility of the Mandatory to the League of Nations. This control, indeed, will continue to be exercised as long as the mandate remains in force, even—and for a transition period of longer or shorter duration probably more strictly—when the Administration of Palestine will have altogether ceased to be the mere nominee of the Mandatory.

A question of considerable importance—though perhaps more from the academic than from the practical point of view—is as to what ministerial authority within the mandatory Government should be entrusted with the control of the Administration in mandated territory. From which ministry of the Home Government is the High Commissioner for Palestine to receive ‘instructions’ or ‘directions’? There is nothing to supply an answer to this question either in the mandate or the Constitution. According to the Palestine Order in Council, 1922, instructions may be given to the High Commissioner either ‘under His Majesty’s Sign Manual and Signet’ or ‘by Order of His Majesty in Council’ or ‘by His Majesty through one of the Principal Secretaries of State.’ A practice has, however, been established recognizing the direct hierarchical authority of the Secretary of State for the Colonies over the Administration of Palestine in common with other territories under British mandate. Such practice is also followed by France and Belgium; Japan, on the other hand, has connected the control of the Administration of the territories under her mandate with the Office of the Prime Minister. There is much to be said in favour of either of these solutions. The former commends itself mainly on the

ground that the Colonial Office undoubtedly has more experience in conducting what has come to be known as 'native affairs.' On the other hand, the second solution is supported as much the sounder from the theoretical point of view, emphasizing as it does the difference between mandated territories and colonial possessions. But even from a purely practical point of view it has been maintained, mainly on the ground of comparatively recent experience, that the colonial civil services of the various Powers do not always provide the right officials for the administration of mandated territories, and that part at least of colonial practice, tradition and routine cannot be applied in such territories without prejudice to the mandate.¹ This argument acquires special strength with regard to mandated territories of the A category which, unlike those of the B and C categories, have never been part of any colonial domain, so that the problems to be solved and the measures to be taken in these territories are often of a wholly different nature from those which are the normal concern of colonial officials.

For Great Britain, in its capacity as Mandatory, this question has come into greater prominence since the creation in 1925 of the Dominions Office and the distinction thus made between purely colonial affairs on the one hand and dominion affairs on the other. The process of specialization thus commenced may have to be completed by being extended to such affairs as are of special concern to mandated territories. This may prove an alternative to placing mandated territories under the control of the Secretary of State for Foreign Affairs, which is advocated on the ground that the Foreign Office is the proper channel for dealing with all matters connected with the League of Nations.

¹ 'There is, it must be owned, some truth in the argument,' says Professor A. Berriedale Keith, 'that it is difficult for officials trained in colonial government to adapt their methods

and ideals to the conditions of mandatory government' (Review of J. Stoyanovsky's *op. cit.*, in *J.C.L.*, vol. vii. part iv. (Nov. 1925), p. 281).

2. TERRITORIAL INTEGRITY, DEFENCE AND PUBLIC ORDER

The Boundaries of Palestine and Article 5 of the Mandate.—The obligation of the Mandatory to safeguard the territorial integrity of Palestine is provided for in Article 5 of the mandate, which reads as follows :

‘The Mandatory shall be responsible for seeing that no Palestine territory shall be ceded or leased to, or in any way placed under the control of, the Government of any foreign Power.’

Similar provisions are to be found in the mandate for Syria (Article 4), and in the final draft mandate for Mesopotamia (Article 4). In view of the fact that no provision to this effect has been inserted in the mandates of the B and C categories, it would seem *a contrario* that no such obligation was assumed by the Mandatories in respect of the ex-German colonial possessions. But as the respective boundaries of these territories have been defined in the mandates themselves, any acquisition or cession of territory would involve the revision of the text of the mandate concerned, and this would automatically bring into play the intervention of the Council of the League with its ensuing guarantee.¹ The position with regard to the territories under A mandate is of a different nature, as the determination of their frontiers was mainly to be carried out after the entering into force of the mandates. In virtue of Article 95 of the Treaty of Sèvres, as we have seen,

‘the High Contracting Parties agree to entrust, by application of the provisions of Article XXII [Part I, Covenant of the League of Nations], the administration of Palestine, within such boundaries as may be determined by the Principal Allied Powers, etc.’

¹ Such, indeed, was the case of the rectification of the boundary between Ruanda - Urundi and Tanganyika when, in consequence of the agreement reached by the Belgian and British Governments, the Council

approved ‘the proposed modifications of Article 1 of the Belgian mandate for East Africa and of Article 1 of the British mandate for East Africa’ (*O.J.*, Nov. 1923, p. 1273).

Provisions to the same effect have been inserted in the preambles of the mandates both for Palestine and for Syria, and only after these provisions had been given effect to could there be any question of territorial integrity affecting these territories. A distinction is therefore to be made between such delimitations as either have been or will be carried out in virtue of the above provision and those that may involve a revision or rectification of frontiers which have once been definitely established by treaty or otherwise. The Mandatory's obligations in this respect can only be invoked in the event of proposed changes in such boundary lines as either were in force before the mandate and which the latter was not meant to affect, or as a consequence of the mandate have been settled by agreement.

Thus, the southern frontier of Palestine between the Mediterranean and the Red Sea, following as it does the straight line¹ of the pre-war Turko-Egyptian boundary, belongs to the first category, since, as far as is known, it was not intended to be materially altered as a result of the mandate (this is at least true as far as the interested Governments were concerned).² As things stand now, there can be little doubt that any cession or transfer of Palestinian territory in this part of the frontier (supposing such a thing were contemplated) would immediately and directly raise the question of the Mandatory's obligations to safeguard the territorial integrity of Palestine. On the other hand, the frontiers of Palestine, north and east, are a new creation, cutting as they do

¹ Speaking of the boundary lines in Africa, G. L. Beer characterizes the 'straight line' boundary as the 'abomination of scientific geographers,' on account of the fact that 'these artificial frontiers cut across natural physical divisions and sever closely related tribes and peoples' (*op. cit.*, p. 65). The frontier between Transjordan and the Hedjaz is also one of the 'straight line' boundaries.

² In answer to a question in the House of Commons, it was stated on behalf of the British Government that 'the line dividing the territories under Egyptian and Turkish administration respectively was defined in 1906 by a boundary commission and has not since been modified' (*P.D. (H. of C.)*, vol. 186, col. 1536).

across areas which previously all belonged to the Ottoman Empire. It was the delimitation of these frontiers that the Palestine mandate entrusted to the Principal Allied Powers, and before such delimitation had actually taken place it could not be said that there was any special obligation upon the Mandatory to secure the inclusion of certain areas within the boundaries of Palestine, although the Mandatory was assuredly under the general obligation of safeguarding the interests of the country in this respect.

Uncertainty has chiefly prevailed with regard to the Syro-Palestine frontier on account of previous conventions between France and Great Britain, such as the Sykes-Picot Agreement, and subsequent military understandings whereby the zone held by British troops was slightly extended to the north as compared with the brown zone of the 1916 agreement.¹ The Franco-British Convention of December 23, 1920,² provided for the readjustment in favour of Palestine of the frontier between this territory and Syria, and traced its general lines between the Mediterranean (Ras-el-Nakura) and the River Yarmuk, east of the Jordan (El-Hammé). But not before April 1924 was this frontier definitely settled in accordance with the Anglo-French Agreement of March 7, 1923.³ The curving line of the frontier seems to have been drawn in such a way as to comprise within the boundaries of Palestine the most northern Jewish settlements which it was intended to bring within the sphere of the national home policy. In a statement of the French accredited representative to the Permanent Mandates Commission indirect reference is made to the fact that this policy influenced the ultimate decision taken with regard to the delimitation of the Syro-Palestine frontier, although it equally points out that what was claimed for Palestine was 'an historical

¹ See *supra*, Introductory.

² *Cmd.* 1195 (1921).

³ *Cmd.* 1910 (1923).

frontier.' 'Further,' said the French representative, 'the British Government had strongly insisted that the frontiers of Palestine should be determined according to the Biblical formula from Dan to Beersheba.'¹

As to the eastern frontier, the only reference made to it in the mandate is to be found in Article 25, stipulating, as we have seen, that the application of certain provisions of the mandate (mainly those connected with the national home policy) may be postponed or withheld 'in the territories lying between the Jordan and the eastern boundary of Palestine as ultimately determined.' According to the Memorandum relating to Article 25 of the Palestine mandate presented by the British Government to the Council of the League, this area comprises

'all territory lying to the east of a line drawn from a point two miles west of the town of Akaba on the Gulf of that name up to the centre of the Wadi Araba, Dead Sea and River Jordan to its junction with the River Yarmuk; thence up the centre of that river to the Syrian frontier.'²

Although Article 25 of the mandate speaks of this territory, which has subsequently become known as Transjordan, as 'lying between the Jordan and the eastern boundary of Palestine,' thus indicating that it is comprised within Palestine, this can hardly be said to be the case in fact. The interpretation given by the Mandatory to the above Article has practically resulted in a complete separation between Palestine proper and Transjordan (in spite, this time, of such 'Biblical formula' as may have been considered relevant for the purpose of determining the northern frontier), not only from the point of view of the national home policy but also as regards general administration. While what is known as 'direct administration' is the

¹ *P.M.C.*, Minutes of 8th Session, p. 69. See also Report of the High Commissioner on the Administration

of Palestine, 1920-1925, *Colonial*, No. 15, p. 55.

² *Cmd.* 1785 (1922), p. 10.

form of government to the west of the Jordan, the administration of Transjordan is of an 'indirect' character, being under the authority of an Arab Chief. The High Commissioner seems to be the only link between those territories, which for all intents and purposes may be considered as constituting two distinct entities entrusted to the same Mandatory.¹ As regards the frontiers of Transjordan, they have practically been settled by agreement—although not yet traced on the spot—the last having been concluded between Great Britain and the Wahabi King at Jeddah on September 17, 1927.²

In the light of these preliminary remarks it will be seen that the above provision of Article 5 of the mandate did not, and indeed was not meant to, apply to such delimitations as have been made with regard to the northern and eastern frontiers of Palestine, for at the time the mandate entered into force there did not exist a well-defined Palestine territory. Having since been

¹ Since this book went to the publishers a treaty has been signed between Great Britain and Transjordan, on February 20, 1928, which fully confirms this view. According to the treaty, 'the word "Palestine" . . . shall mean that portion of the area under mandate which lies to the west of a line drawn' as indicated above (Art. 2, para. 2). Art. 1 of the agreement provides that 'His Highness the Emir [Abdullah] agrees that His Britannic Majesty shall be represented in Transjordan by a British Resident acting on behalf of the High Commissioner for Transjordan, and that communications between His Britannic Majesty and all other Powers on the one hand and the Transjordan Government on the other shall be made through the British Resident and the High Commissioner aforesaid.' The principle of 'indirect administration' is laid down in Art. 2, para. 1, which in its first part runs as follows: 'The powers of legislation and of administration entrusted to His Britannic Majesty as Mandatory for Palestine

shall be exercised in that part of the area under mandate known as Transjordan by His Highness the Emir through such constitutional government as is defined and determined in the organic law of Transjordan.' The Emir agrees, however, 'to be guided by the advice of His Britannic Majesty tendered through the High Commissioner for Transjordan in all matters concerning foreign relations' (Art. 5), financial and fiscal policy (Art. 6), jurisdiction over foreigners (Arts. 6 and 9), freedom of conscience (Art. 9), etc. In the remaining clauses of the agreement every precaution is taken to prevent any act from being done, and any legislative measure from being enacted, which might be inconsistent with Great Britain's obligations under the mandate for Palestine and Transjordan. For the text of the agreement see *Cmd.* 3069 (1928).

² *Cmd.* 2951 (1927). As appears from a note accompanying the Treaty of Jeddah, no final settlement has as yet been effected with regard to the question of Akaba.

definitely settled, the boundaries of Palestine are now under the guarantee and protection of the Mandatory in virtue of the obligation embodied in Article 5.

Judging from the general wording of the Article, it seems to have been the intention of its authors that the Mandatory's obligation with regard to the territorial integrity of the area under his mandate should be widely interpreted. In this respect, however, there is a discrepancy between the two authoritative versions of the mandate. Indeed, the English text provides that 'no Palestine territory shall be . . . in any way placed under the control of the Government of any foreign Power,' thus clearly indicating that the placing of any part of Palestine under such control is inconsistent with the Mandatory's obligation; while in the French version the words are to the effect that '*le Mandataire garantit la Palestine . . . contre l'établissement de haut contrôle d'une Puissance étrangère,*' which does not necessarily imply—and may even be said to exclude—any obligation on the part of the Mandatory to prevent the establishment of foreign control over part of Palestine territory. On the other hand, the expression used in the French version, '*le Mandataire garantit,*' etc., places a more definite obligation upon the Mandatory than does the English wording—'the Mandatory shall be responsible for seeing,' etc.¹ Both the English and

¹ It may be of interest to recall here that the Judgment of the Permanent Court of International Justice with regard to the Mavrommatis Palestine Concessions contains a definite principle of interpretation which may as well apply in this case. The relevant passage reads as follows: 'The Court is of opinion that, where two versions possessing equal authority exist, one of which appears to have a wider bearing than the other, it is bound to adopt the more limited interpretation which can be made to harmonise with both ver-

sions, and which, as far as it goes, is doubtless in accordance with the common intention of the Parties.' The Court, however, appears equally to be of the opinion that, as far as the Palestine mandate is concerned, special force is to be given to the English version 'because the question concerns an instrument laying down the obligations of Great Britain in her capacity as Mandatory for Palestine and because the original draft of this instrument was probably made in English' (*P.C.*, Series A, No. 2, p. 19).

French versions, however, agree in providing that even partial cession or lease of Palestine territory is incompatible with the obligation assumed by the Mandatory, although a distinction is to be made between cession of territory and a mere readjustment of frontiers. The latter, as it appears from opinions expressed at the eighth session of the Permanent Mandates Commission, does not come within the scope of the provision of the mandate relating to territorial integrity. This has been held on the occasion of the examination by the Commission of questions connected with the Angora Agreements which have been concluded between the High Commissioner for Syria and the Turkish Government. The distinction between cession of territory and readjustment of frontiers in favour of a neighbouring country is a mere question of fact which has to be decided in each individual case on its merits. The competent authority for such decision would seem to be not the Mandatory but the Council of the League acting upon the advisory opinion of the Permanent Mandates Commission. On the above occasion the French accredited representative pointed out that 'in regard to the question of principle, the French Government had never had any idea of consenting to considerable modifications of the limits of the territories under mandate without referring the matter to the League,' but, on the other hand, he thought that for readjustments of slight importance or 'topographical rectifications' 'the Mandatory, which was responsible for the foreign relations of the mandated territory, should act freely.' 'There was no doubt,' he said in conclusion, 'that in this connection a question of principle arose, but there was also a question of fact.'¹ The Permanent Mandates Commission seems to have endorsed a similar point of view in its report to the Council of the League by making the following observation :

¹ *P.M.C.*, Minutes of 8th Session, p. 71.

‘As regards the political agreements which the mandatory Power has so far concluded on behalf of the mandated territories, it does not appear that they have *unjustifiably affected* the territorial integrity of Syria and the Lebanon.’¹

The Commission has further noted with satisfaction that the above agreements concluded with the Turkish Government ‘will be communicated to the League of Nations for approval so far as they affect the territorial boundaries of the mandated territory *before they are put into force.*’² While in cases of minor readjustment a mere approval by the League subsequent to the conclusion of the agreement providing for such readjustment is considered as sufficient, it seems that any revision of frontiers involving cession of mandated territory is subject to a definite understanding with the Council of the League to be arrived at prior at least to the conclusion, if not the negotiation, of any agreement to such effect.

As to the duties of the League as a whole with regard to the territorial integrity of mandated areas, it can only be said that neither the particular mandates (including the mandate for Palestine) nor the Covenant contain any provision to this effect. Article 10 of the Covenant, in virtue of which ‘the Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League,’ was obviously not meant to apply to mandated territories. When the territory of one of his mandated areas is threatened, the Mandatory can hardly invoke Article 10 of the Covenant, because what this Article guarantees is his own territorial integrity and not that of the areas under his mandate which do not form part of his territory. No specific obligation seems to lie in this case upon the individual Members of the League as

¹ *Ibid.*, p. 204.

² *Ibid.* The italics are the author's.

it does in the event of any threat to the territorial integrity of such Members. The League, however, can, and indeed will, intervene not only in order to preserve peace, but on the ground that all mandated territories are under its supervision and entrusted to its particular care in virtue of Article XXII of the Covenant.

Organization of the Defence of Palestine.—The fact that the Mandatory alone is directly responsible for the territorial integrity and defence of the area under his mandate does not necessarily mean that the only military forces in the area are to be his own. Article 17, paragraph 1 of the mandate provides that

‘the Administration of Palestine may organize on a voluntary basis the forces necessary for the preservation of peace and order, and also for the defence of the country, subject, however, to the supervision of the Mandatory, but shall not use them for purposes other than those above specified save with the consent of the Mandatory. Except for such purposes, no military, naval or air forces shall be raised or maintained by the Administration of Palestine.’

This provision is based upon one of the fundamental principles laid down in the mandates system, namely that the Mandatory has no right to use the native forces of the territory under his mandate for purposes other than the defence of, or the preservation of peace and public order in, the territory. The Mandatory, like the trustee, may derive from the mandate no direct benefit for himself, be it military, financial or any other. It is the application of this general principle to Palestine that is provided for in the above Article 17, paragraph 1.

There is one point, however, in this connection which may give rise to difficulty of interpretation. According to the above provision, the Administration of Palestine is not entitled to use the native forces for other purposes

than defence and public order 'save with the consent of the Mandatory.' Does it mean that, with such consent, the Administration of Palestine may use the local forces for the Mandatory's own purpose, such as in the event of a general war or in any other case? ¹ If this is what the above provision means, then it may amount to the total negation of the very principle which it has laid down, because there seems to be nothing—as far at least as the mandate itself is concerned—to prevent the Mandatory from giving the necessary consent at any time, should he be in need of additional military forces.

It is, however, difficult to conceive the Council of the League ratifying, without the slightest remark, a provision which would imply so drastic a derogation of the principles of the mandates system. True, the Council might have been unable to prevent the insertion of the above provision in the Palestine mandate, just as, in the case of the French mandates for Togo and the Cameroons, it failed to secure the elimination of an Article expressly providing for the right of the Mandatory to make use of the native forces outside their own territory in the event of a general war. But in that case, at least the provision in question was exhaustively dealt with, and ultimately agreed to only as an unavoidable exception; whereas in the case of Article 17, paragraph 1 of the Palestine mandate the above reservation, 'save with the consent of the Mandatory,' was not even as much as alluded to in the report on A mandates adopted by the Council. The lack of any objection by the Council to a reservation which, at least on the face of it, appears most inconsistent with the general principles of the man-

¹ In the opinion of M. Lewis (*Mandated Territories*, in *L.Q.R.*, Oct. 1923, p. 463) the words mean that 'the Mandatory might use such forces for a war unconnected with the mandated territory by arrangement with

the local Administration.' He adds, however, that 'it is questionable whether the framers of Art. XXII of the Covenant contemplated, much less intended to authorize, such a possibility.'

dates system as explained above, would seem to suggest that a totally different construction has been placed upon the provision in question. In the absence of any indication as to what this construction is, it may prove of assistance to compare Article 17, paragraph 1 of the Palestine mandate with the corresponding provisions of the mandate for Syria and the draft mandate for Mesopotamia. Article 2, paragraph 2 of the latter provides that

‘the said local forces shall thereafter [*i.e.* after the entry into force of the organic law and the re-establishment of public security] be responsible to the local authorities, subject always to the control to be exercised over these forces by the Mandatory. The Mesopotamian Government shall not employ them for other than the above-mentioned purposes [public order and defence], except with the consent of the Mandatory.’¹

Here the consent of the Mandatory appears as an act of control over a native Government who, in virtue of an organic law, is to be granted a certain amount of independence *vis-à-vis* the Mandatory. It can hardly be said in this case that the reservation regarding the Mandatory’s consent was inserted with a view to enabling him to use the native forces in his own interests, while this is what is largely conveyed by the unsatisfactory wording of Article 17, paragraph 1 of the Palestine mandate. It may therefore be said that in the desire to use as far as possible similar expressions in the various A mandates the fact was overlooked that a different meaning might be conveyed by the same reservation according to whether or no the Government of the mandated territory concerned is mainly an agent of the Mandatory. If this be true, the reservation embodied in the above Article 17, paragraph 1, may have only been intended to secure the continuance of control

¹ *Cmd.* 1500 (1921), p. 3.

by the Mandatory over the local Administration when the latter has acquired more freedom of action or when its present character and composition have altered.

This view seems to be confirmed by Article 8 of the Frontier Force Ordinance, 1926,¹ which runs as follows :

‘ The Force [the Transjordan Frontier Force, as it is officially styled] shall not be employed outside the limits of the mandated territory except with the special authority of the High Commissioner, who may authorize its employment in any *adjacent territory when such employment is deemed necessary for the defence of the territory of Palestine and Transjordan.*’²

If this provision constitutes—as it probably does—the Mandatory’s interpretation of his obligations under Article 17, paragraph 1 of the mandate, there can hardly remain any doubt that nothing inconsistent with the general principles of the mandates system has ever been contemplated by the above reservation.

Although Article 17 of the mandate makes no distinction between the forces to be raised for the preservation of peace and public order and those that may be necessary for the defence of the territory, it has from the outset been the policy of the Mandatory to entrust the locally raised forces mainly with police duties and to reserve to his own military forces the defence of the territory. The local police force, however, soon proved to be inadequate in view of the unstable state of affairs in which Palestine, among the other ex-Turkish provinces, was left after the war, and especially on account of the differences that arose between the various sections of the population. The disturbances on a wide scale which broke out in May 1921 amply proved the inadequacy—and to a large extent the unreliability—of the native police in spite of its being under the higher

¹ O.G. (Extraordinary), March 24, 1926.

² The italics are the author’s.

command of British officers.¹ This was the main reason which prompted the creation of a special body of *gendarmérie* on semi-military lines with both police and military duties. It was composed of two sections: the British section (enlisted mainly in Ireland in 1922) and the Palestine section, raised on the spot. More recently, however, fundamental modifications have been made in the *gendarmérie*; the British section has been disbanded, and the Palestine section has also ceased to exist as such, part of it having been drafted into the ordinary police and the remainder constituted into a special Frontier Defence Force 'available for duty in both territories [Palestine and Transjordan] but . . . principally required for service in Transjordan.'² These changes have been rendered possible owing to the fact, as pointed out in the Report of the High Commissioner for 1920-1925, that 'for some time past Palestine has been the most peaceful country of any in the Middle East.'³ In its Report to the Council on the work of the ninth session, the Permanent Mandates Commission has also noted 'with satisfaction that political unrest in the country is decreasing and that order has been preserved in all parts of Palestine.' The Commission adds that it 'does not doubt that the mandatory Power will always have at its disposal local forces capable, *by their composition* and number, of preventing any troubles which might constitute a menace for *any part of the population*.'⁴

¹ See Report of the Commission of Inquiry into the Disturbances of May 1921, *Cmd.* 1540 (1921), p. 49.

² *Colonial*, No. 26 (1927), p. 8.

³ *Ibid.*, No. 15 (1925), p. 5.

⁴ *P.M.C.*, Minutes of 9th Session, p. 217. The words in italics probably refer to the claim put forward by the National Council of the Jews of Palestine in its petition to the League to the effect that the Jewish population 'should be given complete and real opportunity to participate

in every defence or police unit, and that the enrolment should be based upon an equality of civil and national rights of all nationalities in the country' (*ibid.*, p. 210). It was pointed out in the petition that the Jewish population saw in the defence scheme which preceded the Frontier Force Ordinance and which the latter has modified, 'not only an encroachment upon its State and civic rights, but also the danger of disturbances of peace' (*ibid.*).

Among the measures taken by the Administration of Palestine for the preservation of internal peace and public order, mention should be made of the Collective Punishments Ordinance, 1926,¹ substituted for the Collective Responsibility for Crime Ordinance, 1921,² and other provisions of various Ordinances. In virtue of Article 5 of the Ordinance, the District Commissioner of a disturbed area in which an offence has been committed either by the inhabitants themselves or with their connivance, 'may after enquiry order that a fine³ be levied collectively from the assessable inhabitants of the area.' The Ordinance does not affect individual liability to penalty (Article 11), and is meant to act as a deterrent against offences in which whole villages or tribes may be implicated. Typical illustrations of such offences are given in the Report of the Commission of Inquiry into the Disturbances of May 1921, which were mainly due to political agitation and incitement to armed attack by one section of the population against the other. Now, however, that disturbances of such nature are more than unlikely, the Collective Punishments Ordinance is mainly to apply in such cases as tribal or village feuds, which are still sometimes a cause of anxiety in Palestine, in common with the neighbouring Arab countries.

The defence of Palestine from external aggression was mainly entrusted to a British garrison, which has gradually been decreased. Although in virtue of Article 17 of the mandate, as we shall see, part of the cost of maintenance of the British forces stationed in the territory may be charged to the local Administration, there has been no occasion for the latter to contribute to this cost.⁴ Moreover, the state of peace, both internal

¹ *O.G.*, No. 159, March 16, 1926.

² *Ibid.*, No. 57, Dec. 15, 1921.

³ The Collective Responsibility for Crime Ordinance provided only for

collective compensation in the case of 'damage to or destruction or loss of property . . . caused by the act of or theft by persons unknown' (Art. 2).

⁴ *Colonial*, No. 17 (1925), p. 12.

and external, which Palestine enjoys has recently rendered possible the withdrawal of the military forces of the Mandatory (except the Royal Air Force) from the country.

The Mandatory's Right of Passage.—The last provision to be examined in connection with Article 17 of the mandate is the one embodied in its final paragraph; it reads as follows: 'The Mandatory shall be entitled at all times to use the roads, railways and ports of Palestine for the movement of armed forces and the carriage of fuel and supplies.' What is provided for in this paragraph in favour of the Mandatory seems to be an international servitude of passage.

The words 'at all times' should not be taken to imply that the above servitude is of a perpetual character; what they mean is: in time of peace as well as in time of war, in time of internal order as well as in time of disturbances. They do certainly not mean that the right of passage may be exercised by Great Britain in Palestine—or by France in Syria, as a similar provision is inserted in the French mandate for Syria (Article 2, paragraph 4)—even when the mandate has ceased to be in force. It is indeed upon 'the Mandatory,' and not Great Britain or France as the case may be, that the above right has been conferred. But is it only in his capacity as such that the Mandatory is entitled to exercise the above right? In other words, may the Mandatory use the roads, ports, etc., of Palestine only in the event of this being necessary in the interests of Palestine, or is he authorized by the above provision to make use of Palestine as a base for his own military or naval operations? There can be little doubt that the general principles of the mandates system would condemn such an interpretation, but the question is whether a derogation was not made to these principles in the case of A mandates. It may be said that, in

virtue of Article XXII of the Covenant itself, it is only to the B and C categories of mandates that the interdiction to use mandated territories as naval or military bases by the respective Mandatories was meant to apply. It is, however, to be pointed out that the fundamental principles of the mandates system—and the principle involved in the above question is undoubtedly one of them—have been found, both by the competent authorities of the League and the Mandatories themselves, to be of common application in the various categories of mandates, except in cases of express provision to the contrary. There seems, however, to be nothing in the wording of Article 17, paragraph 3, that might be construed as amounting to a derogation of the above principles. Besides, it has to be borne in mind that the right of the Mandatory is only one of passage, as indicated by the terms ‘movement,’ ‘carriage,’ which can hardly be said to include the establishment of naval or military bases.

Moreover, the whole question of the international status of Palestine—and the same is true of Syria—is involved in the interpretation of the above provision. We shall see that an international status, distinct from that of the Mandatories, has been assigned to territories under mandate; if, however, Article 17, paragraph 3, should be construed as implying that the Mandatory—irrespective of whether or not he acts in his capacity as such—is entitled to use Palestine territory for military ends in the event of a war in which he is involved, there can be little doubt that the above principle becomes no more than a dead letter. It has, indeed, been pointed out that

‘It would be unreasonable for Palestine or Syria to be able to claim the privileges of neutrality when its territory is subjected to a servitude inconsistent with neutrality. In time of war international law recognizes belligerency

and neutrality ; it knows no *tertium quid*. If a belligerent is authorized to use certain territory as a base of operations, then that territory is belligerent territory. Thus mandated territories [of the A category] will be involved automatically in the wars of their Mandatories.' ¹

It is, indeed, mainly in time of war that questions connected with the right of passage of the Mandatory may become of vital importance to Palestine, while in time of peace it would sometimes be difficult, if not impossible, to establish in whose interest the above right was exercised, or to what extent the mandated territory benefited by it directly. The main question which may be raised in this case is that of the expense. In this connection it is of interest to note that, in answer to a question of the Permanent Mandates Commission, the Mandatory has declared that 'all expenditure involved [under the above provision] has been defrayed by His Majesty's Government.' ²

3. PUBLIC FINANCE

Obligations of the Mandatory.—There is no general provision in the mandate laying down the principles upon which the Mandatory should base his financial policy in Palestine. It seems, therefore, to be his duty to apply to the special case of Palestine the general rules which have been recognized as inherent parts of the mandates system as a whole, and which the various Mandatories have carried into effect in the territories respectively entrusted to them. The guiding principle underlying those rules is that the financial policy of the Mandatory is to be framed in such a way as to enable the territory under his mandate gradually to progress to financial independence. No country, indeed, can ever be or become politically independent

¹ M. Lewis, *op. cit.*, p. 464.

² *Colonial*, No. 17 (1925), p. 13.

unless it has previously achieved financial independence, and as the ultimate aim of the mandates system is to enable mandated territories 'to stand alone,' the only financial policy for the Mandatory to pursue is the one that leads towards that end, or at least does not prevent it from being attained. This principle is especially emphasized in the case of the territories under A mandates, with regard to which it seems to have been the definite intention of the framers of Article XXII of the Covenant that the mandate period should be the shortest.

As early in the development of the mandates system as 1921, the question of financial policy in mandated territories was dealt with by the Permanent Mandates Commission. It was then pointed out by one of its members that

'Article XXII of the Covenant, of which, moreover, the original draft was in English, seemed to reflect the British colonial view, in accordance with which a colony ought to be self-supporting and have recourse as seldom as possible to the home country for financial support. By analogy, the authors of the Covenant had appeared to extend that principle to mandated territories.'¹

Although it may appear at first sight that such policy would only serve the interests of the Mandatories, yet there seems to be little doubt that the main reason why it was recommended by the Permanent Mandates Commission and has since been established as an integral part of the mandates system was that it furthered the interests of the mandated territories themselves. Indeed, as long as such territories depend upon the financial assistance of their respective Mandatories, it is obvious that the ultimate purpose of the mandate will have to remain in abeyance. Moreover, constant appeals made by a given territory under mandate to the funds

¹ *P.M.C.*, Minutes of 1st Session, p. 23.

of the mandatory Government may result in serious political consequences, as it would become increasingly difficult for that Government to resist such pressure as may be exercised by his own taxpayers (who constitute at the same time the bulk of the electorate) against the continuance of an expensive mandate. This sort of pressure has in fact been felt with regard to certain colonies which have proved too burdensome for the Exchequer of the colonizing Power; and it may be feared that, should a similar situation arise with regard to any mandated territory, the position of the mandatory Government would be even more difficult than in the case of a colony. The latter, indeed, may provide some economic or commercial compensation to the colonizing Power for its financial contribution, while no such benefits, as we shall see, may directly and exclusively be derived by any Mandatory from territories under his mandate.

It is largely on financial grounds that the continuance of the mandates for Mesopotamia and Palestine has been either criticized or opposed in the British Parliament. With regard to the former, financial considerations were prominent among those that strengthened the opposition to the renewal of the Anglo-Iraqi Treaty consequent upon the Mosul award of the Council of the League; as far as Palestine is concerned, financial arguments have frequently been put forward even by those who have really objected to the mandate for reasons of quite a different nature. It is mainly thanks to the substantial decrease year by year in the expenditure incurred by the Mandatory in or for Palestine that the criticism of this mandate has materially subsided.

It may therefore be said that it is chiefly in the interest of the mandated territories that the above principle has been laid down by the mandates system. The obligation of the Mandatory to guide territories

under his mandate towards financial independence is thus based upon the right of those territories : (a) to benefit from the advantages of the *régime* established in virtue of Article XXII of the Covenant, so long as it may be necessary ; (b) to become wholly independent when they are ' able to stand alone.'

The financial policy pursued by the Mandatory in Palestine has been guided by the above considerations from the very beginning, even before the mandate came into force. The main object of the local Administration in this respect was to meet the budgetary expenditure of Palestine, as well as its financial obligations, firstly and chiefly from the resources of the territory itself ; the assistance of the Mandatory's Exchequer was resorted to only in so far as it was not found possible to cover the military expenditure of the territory or to secure loans and advances. Consequently the following principles have been laid down :

- (1) Financial autonomy is to be granted to Palestine.
- (2) Military expenditure is provisionally to be borne by the Mandatory.
- (3) The Mandatory is to guarantee such loans as may be necessary for the development of the territory.

(1) THE PRINCIPLE OF FINANCIAL AUTONOMY

By virtue of this principle the mandated territory is to have a budget of its own, entirely distinct from that of the Mandatory. Its main object is to secure the use of the local revenue for the territory's own benefit, and the Mandatory is accorded no right to any surplus of revenue over expenditure that may result from the local budget. Any such surplus must be spent in or for the territory, subject to what has been said above with regard to the

interest the latter may have in lightening the burden of the Mandatory's expenses. This, indeed, is merely the financial expression of the general principle that the trust held by the Mandatory is of a gratuitous nature. The question of appropriation of budgetary surpluses in mandated territories is, however, to be left to the Mandatory's own discretion, subject, of course, to the supervision of the League. In the event of a deficit it is the duty of the Mandatory first to attempt the balancing of the budget with the resources of the territory itself, and only when this cannot be achieved is he to meet such deficit from his own budget. It has been pointed out within the Permanent Mandates Commission that the fact of the Mandatory's occasionally covering the deficits of a mandated territory does not affect the principle of financial autonomy; a budgetary deficit, as has been said, is mainly a question of treasury, while the principle of financial autonomy is of administrative character; and it may be added that the application of this principle to mandated territories is a question of international character in so far as it constitutes an integral part of the mandates system itself.

These are the broad lines of financial policy which Mandatories have to follow, and, as appears from the successive reports on the administration of Palestine, they have always been applied in that territory. Before reducing the Mandatory's expenses for the defence of Palestine, the local Administration found it necessary to devote considerable sums to the construction and purchase of railways,¹ the construction of roads and various public works. On the other hand, it gradually reduced the expenditure charged to the ordinary budget of the territory, thus partly relieving the local taxpayer by suppressing or reducing some of the previous Turkish

¹ Such as the Jerusalem-Jaffa railway, which belonged to a French Company (*Colonial*, No. 15, p. 7).

taxes.¹ Moreover, there was no occasion for the Mandatory to cover any deficit of the Palestine civil administration (the question of military expenditure will be dealt with later), and already in the first report it is stated that the cost of this administration 'has been kept within the amount of the local revenue, and no grant-in-aid is received from the British Exchequer.'² This, according to subsequent reports, seems to be still the position as a whole.³

In connection with the question of financial autonomy, and as a further step in its development, a special Order in Council has been promulgated providing for the establishment of a Palestine currency.⁴ Transjordan was expressly excluded from the scope of the Order (Article 9).

(2) MILITARY EXPENDITURE

It may be considered as a fairly well established principle of the mandates system that it is the Mandatory's

¹ 'Certain among them,' says the above Report, 'that were irritating and vexatious have been repealed or amended. The practice of farming out to contractors the collection of agricultural tithes has been abolished. The tax payable to secure exemption from military service has disappeared with compulsory military service itself. A number of changes have been made in the customs tariff. But, as a whole, the fiscal system remains much as it was' (*ibid.*, pp. 6-7). It has since been announced that the tithe, which constitutes one of the main sources of local revenue, is to be replaced by a new tax on land. [In the meantime it was reduced from 12½ to 10 per cent.] The contemplated change will involve a substantial reform of the land system in Palestine, as may be seen from the following quotation: 'The tithe was and is regarded as a rent paid by an occupier to an owner (the State). The ordinary taxes of a fixed amount payable in cash are not

regarded in this light. In other words, they do not constitute an admission of tenancy. It follows that if the tithe is changed to a tax of this nature it will cease to be the mark and admission of absence of ownership. The forthcoming settlement is intended to introduce such a change' (Mr. Justice Tute, *The Law of State Lands in Palestine*, in *J.C.L.*, vol. ix. part iv. (Nov. 1927), p. 182). It is probably on account of the wide scope of the contemplated reform that the abolition of the tithe has been so long overdue, in spite of its obvious defects. A vivid criticism of the tithe is made by J. C. Wedgwood in *The Seventh Dominion*, pp. 15-19.

² Interim Report on the Civil Administration of Palestine, July 1920-June 1921, *Cmd.* 1499 (1921), p. 10.

³ *Colonial*, No. 15, p. 7.

⁴ The Palestine Currency Order in Council, 1927, *O.G.*, No. 193, Aug. 16, 1927.

duty to bear, at least in the early stages of his administration, such expenses as are necessary for, or connected with, the defence of the territory under his mandate. Although no special provision to this effect has been embodied in the mandates, this has always been the practice of the various Mandatories. As far as Palestine, however, is concerned, the above principle seems to be implied in the following provision, common only to the A mandates: 'Nothing in this Article shall preclude the Administration of Palestine from contributing to the cost of the maintenance of the forces of the Mandatory in Palestine' (Article 17, paragraph 2). What it means is that the cost of maintenance of the Mandatory's forces in Palestine is to be borne first by the Mandatory himself, who is allowed, however, to ask the local Administration to contribute towards it. Such contribution is, naturally, subject to and limited by the financial capacity of the territory; but as on the one hand this capacity is gradually increasing—owing largely to immigration and importation of capital—and on the other, military expenditure is constantly diminishing—owing to internal and external peace, which seems to have been definitely established—it is to be expected that soon no more financial grants of the Mandatory for the defence of Palestine will be necessary.¹

Moreover, time and again it has been pointed out by the British Government itself that it was open to doubt

¹ 'The cost to the British taxpayer,' says the High Commissioner's Report for 1920-25, 'which was £3,155,000 in 1921-22, has been reduced year by year and is estimated for 1925-26 at £640,600. If no untoward events occur, this sum also may be subject to reduction in the near future.' And in this connection the Report adds that 'apart from the cost of the garrison, there is not, and has never been, any grant from the British Exchequer in aid of the Civil Administration of Palestine' (*Colonial*, No. 15, p. 5). This,

however, does not include Transjordan, as may be seen from the following quotation: 'The financial transactions of the Transjordan Government are not incorporated in Palestine accounts, and advances made by Palestine before the 1st April 1921 have been recovered from the Parliamentary grant-in-aid to Transjordan for the year 1921-2' (Report on Palestine Administration, July 1920-December 1921, p. 6). For the financial year 1926-27 the estimate was only £16,000 (*P.D.* (H. of C.), vol. 207, col. 656).

whether the whole cost of maintenance of the British garrison (including the Royal Air Force) stationed in certain mandated territories should be considered as being incurred exclusively for the benefit of these territories. Indeed, part at least, if not the whole, of the garrison, and especially the Air Force, stationed in Iraq, for instance, would have had to be kept up by the British taxpayer even if there had been no such territory to defend. This is equally true with regard to Palestine and Transjordan.¹ One is therefore justified in thinking that the additional expenditure caused to the British taxpayer by Palestine proper—the Air Force is, indeed, mainly concerned with the defence of Transjordan—is, in fact, largely inferior even to the reduced figures which appear in the British budget estimates.²

So long as it is the Mandatory who defrays the military expenditure for the territory under his mandate, it seems to be irrelevant from the point of view of the mandates system whether or no the forces maintained in the territory are strictly those that are indispensable for the defence of the latter—subject, however, to the obligation of the Mandatory not to use such territory

¹ Indeed, the recent treaty between Great Britain and Transjordan provides that the latter will bear 'as soon as the financial resources of the country permit, *the excess of the cost of the British forces stationed in Transjordan, so far as such forces may be deemed by His Britannic Majesty to be employed in respect of Transjordan, over the cost of such forces if stationed in Great Britain*' (Art. 11).

² In spite of the fact that the Frontier Defence Force, as we have seen, is 'principally required for service in Transjordan,' the latter territory is only charged with one-sixth of its cost, although it 'recognizes the principle that the cost of the forces required for the defence of Transjordan is a charge on the revenues of that territory' (Art. 11

of the Anglo-Transjordan Treaty). The balance, as appears from the Report on the Administration of Palestine and Transjordan for 1926, 'is borne by the Palestine Government with the assistance in 1926 of a grant-in-aid from the British Government' (*Colonial*, No. 26, p. 8). Although there can be no doubt that the defence of Transjordan against desert raids is of direct and immediate concern to Palestine, it is probably true to say that the Palestine Government bears financially more than what should be its share in the defence of the country. The grants-in-aid of the British Government for defence purposes may therefore be said to be made, at the present moment, exclusively in the interest of Transjordan. They are explicitly provided for in the above treaty (Art. 12).

as a military or naval base. On the other hand, when the mandated territory is asked to defray, or to contribute towards, the above expenditure, it is the duty of the Mandatory to limit his forces in that territory to such numbers as are strictly necessary for defence and preservation of public order. 'Except for such purposes,' says the mandate, 'no military, naval or air forces shall be raised or maintained by the Administration of Palestine' (Article 17, paragraph 1 *in fine*).¹ Otherwise, the Mandatory may have part of the cost of maintenance of his own forces paid for by the mandated territory, which would be inconsistent with the gratuitous nature of the mandatory trust.

(3) LOANS, ADVANCES AND INVESTMENTS

Under this heading there was examined by the Permanent Mandates Commission (mainly at the third, fourth, fifth and sixth sessions) a most important question involving fundamental issues of the mandates system. This question, like practically all the others dealt with by the Commission, was raised not with a view to solving some theoretical problem but in order to remove a definite practical difficulty. In the opinion of the Commission 'mandated territories were exposed to an economic disadvantage in consequence of the popular doubts as to the stability of the mandates.'² This seems to have largely prevented individual capitalists from making investments in these territories, and mandatory Governments from providing the necessary guarantee for loans. On the other hand, it was asked whether the mandatory principles would allow the

¹ The word 'maintained' seems clearly to refer to expenditure, as any other interpretation would make it more or less synonymous with 'raised,' and therefore superfluous. 'Administration of Palestine' is used,

as we have seen, as distinguished from 'the Mandatory.'

² Memorandum by Sir Frederick (now Lord) Lugard, *P.M.C.*, Minutes of 5th Session (Annexe 6), p. 176.

assignment of special guarantees (railways for instance) to the service of such loans as might be granted or guaranteed by the Mandatory.

With regard to the first question, involving the far more general one of the termination of the mandate, the Permanent Mandates Commission decided, after prolonged discussions continued through four consecutive sessions, to submit to the consideration of the Council the following draft resolution :

‘The Council of the League of Nations . . . (1) Declares that obligations assumed by a mandatory Power in a mandated territory and rights of every kind regularly acquired under its administration, shall have under all circumstances the same validity as if the mandatory Power were sovereign. (2) Decides that: (a) In the event of a cessation of a mandate or of its transfer—however improbable this may be—to a fresh mandatory Power, the Council, without whose approval no such change can take place, will not give such approval unless it has been assured in advance that the new Government undertaking the administration of the territory will accept responsibility for the fulfilment of the financial obligations regularly assumed by the former mandatory Power and will engage that all rights regularly acquired under the administration of the latter shall be respected; (b) Moreover, the Council, when this change has been effected, will continue to use all its influence to ensure the fulfilment of these obligations, as has already been expressly provided in the mandates for Syria and Lebanon and for Palestine.’¹

This reference to the mandates for Palestine and Syria concerns the following provision: ‘In the event of the termination of the mandate . . . the Council of the League of Nations . . . shall use its influence for securing, under guarantee of the League, that the

¹ Report submitted to the Council of the League, *P.M.C.*, Minutes of 6th Session, p. 172.

Government of Palestine will fully honour the financial obligations legitimately incurred by the Administration of Palestine during the period of the mandate . . . ' (Article 28 of the mandate for Palestine; a similar provision is to be found in Article 19 of the mandate for Syria).¹ It is the absence of some such provision in the B and C categories of mandates that seems to have mainly prompted the Permanent Mandates Commission to suggest that some declaration be made by the Council with a view to reassuring both the Mandatories and the prospective private investors as to the security of their advances and investments in mandated territories. All that the above draft resolution contemplated was to extend to such territories the application of the general principles of international law relating to succession of States.

One might have thought that 'the reserve and hesitation displayed by private capitalists and even mandatory Powers' to invest capital in mandated territories would be far greater as regards the A than the B and C mandates, owing to the fact that the former are generally intended to be of shorter duration. Experience, however, has shown that this was not the case, although there is nothing to prove that the comparatively more favourable position of Palestine and Syria, in this respect, is due to the above special provision inserted in the A mandates. Palestine especially may be said to be in a somewhat privileged position with regard to investments. Capital is imported into Palestine not so much under the guarantee of the general provisions of the mandate as of those relating to the Jewish national

¹ The words 'shall use its influence for securing' were substituted by the Council for 'shall make such arrangements as may be deemed necessary . . . for securing.' This alteration was decided upon after it was pointed out by the Secretary

General of the League that the former draft of Art. 28 'imposed on the League a new guarantee which was of a financial character,' and that 'the League had not hitherto accepted a guarantee of this kind' (*O.J.*, Aug. 1922 (Part II.), p. 822).

home. Investments are largely made through, or under the guidance of, the Jewish agency, which, in virtue of Article 4 of the mandate, as we have seen, is 'to secure the co-operation of all Jews who are willing to assist in the establishment of the Jewish national home.' In addition to its own budget,¹ consisting almost exclusively of imported capital and spent practically in its entirety within Palestine, through its various departments (Immigration, Agricultural and Urban Colonization, Education, Public Welfare, etc.), the Jewish agency (at present the Zionist Organization) controls, partly or wholly, a number of companies investing considerable amounts of capital in the country for the construction of public works, electrification, mining, etc. It seems, therefore, that, as far as Palestine is concerned, the application of the mandate, far from having exposed the territory to such economic disadvantages as have been referred to above, has on the contrary diverted to it a comparatively large flow of capital, to the benefit of the country as a whole.

As regards the second question raised by the Permanent Mandates Commission, namely that of the hypothecation of certain works (railways, harbours, etc.) to the Mandatory against such loans and advances as the latter may grant or guarantee in the interest of territories under his mandate, there is some difficulty in forming a definite judgment on the matter, owing to conflicting opinions which have been expressed by competent authorities. A draft decision was submitted by the British member on the Permanent Mandates Commission providing that the Commission should recommend *inter alia* that 'any advances or loans made by the mandatory Power should not be secured in any particular property, such as railway or harbour or land

¹ Amounting to about a third of the budget of the Palestine Administration.

etc., but as a free charge on the revenue of the mandated territory,'¹ the reason apparently being that in case of such security being taken, 'those works or lands are thereby mortgaged to the Mandatory, and it may be said that the mandatory principle has consequently been imperilled in favour of annexation.'² It is added that 'if the hypothetical test of transfer of the mandate be applied, it is clear that no succeeding Mandatory could undertake the mandate if such important assets of the country were owned by a foreign Power (viz. the retiring Mandatory).'³ The opposite view was taken by the vice-chairman of the Commission, who pointed out that 'property used as security for a loan does not *ipso facto* pass into the possession of the lender [in this case the Mandatory]; although mortgaged to the lender, it does not belong to him unless execution has taken place and the lender has actually acquired ownership.'⁴ He did not see, therefore, 'how the taking of securities of any kind can be regarded as a measure equivalent to annexation and, consequently, one imperilling the mandatory principle.'⁵ This divergence of view seems to correspond to the different conceptions of English law on the one hand and what is generally called Continental law on the other, as to where the legal ownership of mortgaged property resides. As far as mandated territories, however, are concerned, this question appears to be of theoretical rather than practical importance. Indeed, the *rapporteur* of the Permanent Mandates Commission, formerly Director of the Mandates Section at the Secretariat of the League, was of the opinion that the question could hardly arise in practice. He said :

'Disposing as it does of the public finances of the territory, such a Power [the Mandatory] is obviously free

¹ *P.M.C.*, Minutes of 5th Session, p. 180.

⁴ *P.M.C.*, Minutes of 6th Session, p. 151.

² *Ibid.*, p. 179.

³ *Ibid.*

⁵ *Ibid.*

to take from the revenue yield a sum sufficient to cover this service [of the loan or advance granted by it]. What reasons might lead a mandatory Power to have security for a debt when the debtor's resources are entirely at its disposal? . . . We should note, moreover, that no transaction of the kind has ever been brought to the notice of the Permanent Mandates Commission.' ¹

This is, indeed, the case with such cash advances for capital expenditure upon railway and other public works and services as have been made by the British Crown Agents for the Colonies to the Administration of Palestine, and with certain imperial assets (railways, roads, etc., constructed by the British army for military purposes, mainly during the war) which have been handed over to the latter with the intention that their value 'should be entered against Palestine as a book-debt, and that so soon as the finances of Palestine admit, payments by way of interest and sinking fund on this book-debt should be made by Palestine to His Majesty's Government.' ²

Such payments are provided for in the Palestine loan which the Mandatory has been asked to guarantee.

¹ *P.M.C.*, Minutes of 6th Session, p. 158.

² Statement by the Under Secretary of State for the Colonies, *P.D.* (H. of L.), vol. 58, col. 152. According to the High Commissioner's Report for 1920-25, 'the post-war value to Palestine of these assets has been variously estimated at from one to two million pounds' (*Colonial*, No. 15, p. 8); the above statement, however, estimates it at an approximate figure exceeding the latter amount (*ibid.*, col. 151). As to the cash advances or temporary loans, their total amount, up to July 1924, was over £1,500,000 (*ibid.*), but they seem to have risen to about £2,000,000 by the end of March 1925, as may be seen from the High Commissioner's Report (p. 7). It is difficult, however, to ascertain the

exact amount of these advances, and even the Permanent Mandates Commission seems not to have been provided with the necessary material. In its report on the work of the 7th Session submitted to the Council of the League the Commission says that 'it would . . . be useful to have a separate table showing the funds advanced, loaned or given gratuitously to the Palestine Government by the British Government year by year since it assumed control as Mandatory Power' (*P.M.C.*, Minutes of 7th Session, p. 214). 'Fuller explanations' and 'further details' regarding the state of public finance in Palestine were also asked for by the Permanent Mandates Commission at its 9th Session (see Minutes, p. 217) and 11th Session (Report to the Council, p. 3).

The British Government decided in principle that such guarantee should be given, but the authority of an Act of Parliament was necessary to this effect. Two years later the question of the Palestine loan came up in the House of Commons together with that of the East Africa loan, the resolution before the House being to the effect

'That it is expedient to authorize the Treasury to guarantee the payment of the principal of and the interest on . . . a loan to be raised by the Government of Palestine not exceeding an amount sufficient to raise £4,500,000.'¹

It seems that a smaller amount was originally contemplated, and the sum of £3,000,000 was mentioned, though not authoritatively, in this connection.² The increase was probably due to a desire that the loan should enable Palestine to repay a more substantial part of its liabilities to the Mandatory, without interfering with the necessary funds for public works and services (railways, harbours, etc.). It is, however, to be pointed out that there has never been any mention, in this connection, of hypothecation of Palestine property or revenue either to the Mandatory or to the individual investors; besides the reason stated above for the absence of any special guarantees, the surpluses shown by Palestine budgets for the last few years³ have largely contributed towards making such additional precautions quite superfluous. The above resolution was agreed to by the House of Commons, and an Act of Parliament passed on December 15, 1926.⁴ Subsequently an Ordi-

¹ *P.D.* (H. of C.), vol. 198, col. 1321.

² *P.D.* (H. of L.), vol. 58, cols. 150 and 151.

³ Except in the financial year 1922-23, which closed with a comparatively small deficit (*Colonial*, No. 15,

p. 7). The surplus, however, exceeded a quarter of a million pounds in 1924-25 (*ibid.*), and £700,000 in 1925-26 (Statement made by the Secretary of State for the Colonies, *P.D.* (H. of C.), vol. 198, col. 1336).

⁴ *Public General Acts*, 1926, pp. 526-528 (16 & 17 Geo. V. c. 62).

nance¹ was enacted by the Government of Palestine authorizing the High Commissioner 'to issue stock or bonds or both to an amount sufficient to produce as nearly as may be the sum of £4,500,000.'²

On the other hand, it is to be borne in mind that important financial liabilities had to be assumed by Palestine in respect of the Ottoman Public Debt. In virtue of Article 241 of the Treaty of Sèvres, 'States in whose favour territory has been detached from Turkey . . . under the present treaty, shall participate in the annual charge for the service of the Ottoman Public Debt contracted before November 1, 1914.'³ This provision applies to Palestine as well as to the other territories under A mandates, which, as we have seen, are sometimes referred to as States both in the Treaty of Sèvres and the Treaty of Lausanne. As regards 'the general principle to be adopted in determining the amount of the annuity to be paid by each State,' it is provided in Article 243, paragraph 2 of the Treaty of Sèvres—and a similar clause was inserted in the Treaty of Lausanne, Article 51 (1)—that

'the amount shall bear the same ratio to the total required for the service of the Debt as the average revenue of the transferred territory bore to the average revenue of the whole of Turkey . . . over the three financial years 1909-10, 1910-11 and 1911-12.'

¹ Palestine Loan Ordinance, 1927, *O.G.*, No. 189, June 16, 1927.

² In virtue of the Schedule to the Ordinance, this amount is to be divided as follows:

	£
1. Railways	1,640,000
2. Purchase of railway and other capital assets from His Majesty's Government	1,000,000
3. Harbour construction and port improvements	1,115,000
4. Public buildings, telegraphs and telephones, surveys, etc.	745,000
	<u>4,500,000</u>

³ The provisions of the Treaty of Sèvres, although not ratified, are cited here in preference to those of

the Treaty of Lausanne (Art. 46) because their wording happens to lend itself better to partial quotation.

The date upon which this liability took effect with regard to the above territories was fixed for March 1, 1920 (Articles 245 of the Treaty of Sèvres and 53, paragraph 2 of the Treaty of Lausanne). However, in virtue of Article 55 of the latter treaty, the amounts falling due between the above date and the date of the coming into force of the treaty (August 6, 1924) will be paid 'without interest by means of twenty equal annuities' from the latter date.

Before the war a special body known as the Ottoman Public Debt Administration was responsible for the collection of such revenues as have been assigned to the service of the Turkish foreign debt, and in virtue of the Treaty of Sèvres 'the system of direct levy of certain revenues by the existing Administration of the Ottoman Public Debt shall . . . be extended as widely as possible and applied *throughout the provinces remaining Turkish*'¹ (Article 246, paragraph 4). With regard to the territories detached from Turkey, it is only stipulated that they 'shall give adequate guarantees for the payment of the share of the above annual charge allotted to them respectively' (Article 241, paragraph 2). The Treaty of Lausanne also speaks in this connection only of 'adequate security' to be assigned to the Council of the Debt (Article 48, paragraph 1). Whatever construction may be placed upon the term 'security,' either in itself or as distinguished from 'guarantee,'² there can be little doubt that it was definitely intended not to impose any such measure as hypothecation of

¹ The italics are the author's.

² It may be said that the expression 'shall assign adequate security' implies a more definite guarantee than the one provided for in the above clause of the Treaty of Sèvres, the object of this substitution being to counter-balance partly the loss, under the Treaty of Lausanne, of

the special guarantees which the Treaty of Sèvres has stipulated from the provinces remaining Turkish. It has, however, to be pointed out that in the French version of the Treaty of Sèvres and the Treaty of Lausanne the identical expression '*gages suffisants*' is used for both 'adequate guarantee' and 'adequate security.'

revenue upon the territories detached from Turkey. This has enabled the Palestine Government to amalgamate the special revenue of the former Ottoman Public Debt Administration with the general revenue of the country, and it is the Palestine budget as a whole—not specially assigned taxes or revenues—that is responsible for the service of Palestine's share in respect of the Ottoman Public Debt as fixed by the Council of the Debt.¹ Indeed, in virtue of Article 2 of the Ottoman Debt (Payment of Annuities) Ordinance, 1925, the above share 'shall be a first charge upon and shall be payable out of the general revenue and assets of Palestine.'

4. CIVIL AND RELIGIOUS RIGHTS AND INTERESTS

The mandate for Palestine, as we have seen, contains frequent mention of the rights, interests and position of the local inhabitants which the Mandatory is to safeguard. Such mention is particularly made in the provisions affecting the national home policy, with the object of securing that no prejudice whatever shall be caused, either to Palestine as a whole or to the non-Jewish sections of the population, by the above policy in its various aspects. The provisions in question have already been dealt with; there are, however, others which are not necessarily connected with the national home policy. These may be grouped in two distinct categories according to whether they affect individual rights and interests of the inhabitants or collective rights and interests of the various communities in Palestine.

¹ According to a statement made by the Under-Secretary of State for the Colonies, 'Palestine's share of the Ottoman Public Debt is 2·46 per cent. as regards the loans prior to October 17, 1912, and 3·02 per cent. as regards the loans raised between October 17, 1912, and November 1,

1914' (*P.D.* (H. of C.), vol. 200, col. 2291). The actual annuities amount to nearly L.T.300,000 for the first twenty years and to over L.T.250,000 subsequently. See Schedule, Ottoman Debt (Payment of Annuities) Ordinance, 1925, *O.G.*, No. 135, March 15, 1925.

(1) INDIVIDUAL RIGHTS AND INTERESTS

The question of individual civil rights—religious rights being mainly of a collective character, as we shall see—has been dealt with in a comparatively recent case, known as that of the Urtas Springs, which came on appeal from the Supreme Court of Palestine before the Judicial Committee of the Privy Council.¹ The facts were briefly as follows: Owing to the scarcity of water in Jerusalem during the spring of 1925, an Ordinance² was enacted by the High Commissioner with a view to enabling the local authorities of Jerusalem to use the springs of Urtas (belonging, as it appears, to the inhabitants of the village of that name) for the water supply of the city. The Ordinance guaranteed to every inhabitant of the village a sufficient supply of water for all his needs (Article 2)—the quantity of which was to be determined by arbitration in case of non-agreement (Article 5)—and provided for compensation for any loss he might sustain through the operation of the Ordinance (laying of pipe-lines on his land, destruction of crops, etc.), such compensation equally to be submitted to arbitration in the event of disagreement as to its amount (Articles 3, 4 and 5). The inhabitants of Urtas, however, applied by petition to the Supreme Court for an Order restraining the Jerusalem authorities from taking their water. The Order having been granted, for reasons which will appear later, an appeal was made to His Majesty in Council, pending which the operation of the injunction was stayed. The Judicial Committee reversed the judgment of the Supreme Court, setting aside the above Order and dismissing the petition.

Before the main issue involving the rights of the

¹ Jerusalem-Jaffa District Governor and another v. Suleiman Murra and others, [1926] A.C., pp. 321-330.

² The Urtas Springs Ordinance, 1925, O.G. (Extraordinary), May 25, 1925.

inhabitants is dealt with, a few preliminary remarks have to be made with regard to questions of procedure and competence. These, as we shall see, are mainly connected with the provisions of the Palestine Constitution, and may be summarized as follows :

(a) Was the enacting of the Urtas Springs Ordinance, 1925, within the competence of the High Commissioner ?

In virtue of Article 1 of the mandate, as we have seen, 'the Mandatory shall have full powers of legislation and of administration, save as they may be limited by the terms of this mandate.' These powers have been partly delegated by the Mandatory to the High Commissioner in the Palestine (Amendment) Order in Council, 1923, enacting that he 'shall have full power and authority . . . to promulgate such Ordinances as may be necessary for the peace, order and good government of Palestine,' provided, among other things, that 'no Ordinance shall be promulgated which shall be in any way repugnant to or inconsistent with the provisions of the mandate.' The answer to be given to the above question depends, therefore, upon the solution of the other question as to whether or not the Urtas Springs Ordinance is inconsistent with the provisions of the mandate, and in particular of Article 2, safeguarding the civil rights of all the inhabitants of Palestine. The first question is thus merged into the main issue, which will be examined below.

(b) Is the Supreme Court of Palestine entitled to question the validity of Ordinances enacted by the High Commissioner ?

It is under the provision embodied in Article 43, paragraph 2 of the Palestine Order in Council, 1922,¹ that a petition was submitted on behalf of the inhabitants of Urtas objecting to the validity of the Urtas Springs Ordinance on the ground of its being

¹ See Government of Palestine, *supra*, pp. 185-186.

inconsistent with the terms of the mandate. The Supreme Court was satisfied that it was

‘bound by the general rule that the validity of laws made by a legislature which is not sovereign but the creature of some instrument of government may be questioned by the local Courts on the ground that they are repugnant to some provision to be found in that instrument.’¹

There are no administrative tribunals in Palestine, and the wide terms of Article 43, paragraph 2 of the Palestine Order in Council, 1922, have been interpreted by the Supreme Court as implying the above general rule. The latter, indeed, provides a very important guarantee for the safeguarding of the civil rights of the local inhabitants, and the Judicial Committee was equally of the opinion that ‘the Supreme Court was fully justified in entertaining an argument as to the validity of the Ordinance,’ and that ‘it was the right and duty of the Court to examine the terms of the mandate and to consider whether the Ordinance was in any way repugnant to those terms.’²

(c) Did an appeal lie in this case from the Supreme Court of Palestine to the Judicial Committee of the Privy Council?

This point was raised at one time but subsequently dropped. The Palestine Order in Council, 1922 (Article 44), as we have seen, provides for appeals to His Majesty in Council ‘in civil matters when the amount or value in dispute exceeds £E.500.’ It is under this clause that the Palestine (Appeal to Privy Council) Order in Council, 1924, has been enacted providing for appeals to the Judicial Committee from the Supreme Court of Palestine, only when sitting as a Court of Appeal (Article 2). As, however, in this case the Supreme Court sat

¹ Quoted under reserve from unofficial documents, the case not having been reported. See also *the Status of Mandated Areas*, in *A.J.*, vol. xx. (Oct. 1926), p. 769.

Q. Wright, *Some Recent Cases on* ² [1926] A.C., p. 327.

as a Court of First Instance or, in the terms of the Palestine Order in Council, 1922, as a High Court of Justice, the question was raised whether the Judicial Committee was competent to take cognizance of the appeal. Special leave was applied for by the appellants and was granted. It was held by the Judicial Committee that 'the appeal was competent, since the jurisdiction under the mandate was jurisdiction in a foreign country within the description in the preamble to the Foreign Jurisdiction Act, 1890.'¹

The above questions of competence and procedure are purely incidental to the main issue, although important precedents have been established by the solution of various points raised both before the Supreme Court of Palestine and the Judicial Committee of the Privy Council. The question with which we are concerned here is connected with the safeguarding of the civil rights of the inhabitants, as provided for in the Palestine mandate. What is the scope and extent of these rights? Were they infringed by the Urtas Springs Ordinance, and consequently, is this Ordinance *ultra vires* and inconsistent with the terms of the mandate?

The provisions of the mandate involved in the question are those embodied in Articles 2 and 11. The former provides, *inter alia*, that

'the Mandatory shall be responsible . . . for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion,'

while in Article 11 it is stipulated that the Administration of Palestine

'shall take all necessary measures to safeguard the interests

¹ *Ibid.*, p. 321. The preamble reads as follows: 'Whereas by treaty, capitulation, grant, usage, sufferance and other lawful means, Her Majesty the Queen has jurisdiction within divers foreign countries . . .' The

expression 'foreign countries' is defined in Sec. 16 of the Act as meaning 'any country or place out of Her Majesty's dominions'—*Public General Acts*, 1890, pp. 286-290 (53 & 54 Vict. c. 37).

of the community in connection with the development of the country, and . . . shall have full power to provide for the public ownership or control of any of the natural resources of the country . . .'

There seems to be little doubt that the Administration of Palestine was entitled to 'provide for the public ownership or control' of the Urtas Springs, which form part of 'the natural resources of the country,' but the wording of Article 11 suggests that the interests of the community should be first safeguarded. In the opinion of the Supreme Court of Palestine the above provision means that the individual inhabitants of the country are entitled to full compensation whenever their rights are interfered with; this was said by the Chief Justice of Palestine to be a 'recognized principle of sound legislation,' and the Urtas Springs Ordinance, not having fully complied with this principle, was consequently *ultra vires* and void. In its decision the Judicial Committee agreed that in case of expropriation for public purposes, and in the absence of exceptional circumstances, justice, or, as said elsewhere, natural justice, required 'that fair provision shall be made for compensation.' It was added, however, that 'this depends not upon any civil right but (as the Chief Justice said) upon principles of sound legislation.'¹ This distinction is of the first importance, because, while the Courts are undoubtedly competent to see if and to what extent the rights of the inhabitants have been interfered with,

'it cannot be the duty of the Court to examine (at the instance of any litigant) the legislative and administrative acts of the Administration, and to consider in every case whether they are in accordance with the view held by the Court as to the requirements of natural justice.'²

Moreover, it is open to question whether what was called 'full compensation' was not provided for in the Urtas

¹ [1926] A.C., p. 328.

² *Ibid.*

Springs Ordinance. True, Article 2, guaranteeing a sufficient supply of water to the inhabitants of Urtas, did not provide for compensation, but, as pointed out by the Judicial Committee, 'this is because a breach of that clause would be a wrong for which the persons aggrieved would be entitled to recover full damages in the local Courts.'¹ As to the clause of the Ordinance regarding arbitration, it is true that the Courts are the natural guardians of civil rights; but the designation of an arbitrator to determine the amount of water to be guaranteed to the inhabitants of Urtas, and to award compensation for damage to or loss of crops, etc., is fully within the competence of the High Commissioner. 'There is no question of ousting the jurisdiction of the Court,' says the decision of the Judicial Committee. 'A Court may award damages for a wrong, but cannot (unless expressly authorized by statute to do so) award compensation for a lawful expropriation; and when a right to compensation is given by statute, there can be no objection to the amount being determined in such manner as the statute may provide.'²

It has been recognized by the Supreme Court of Palestine that 'no efficient Government can carry on its work without prejudicing the rights of the citizens,' and that 'the mandate provides for certain cases of unavoidable interference with civil rights.'³ In the opinion, therefore, of both the Supreme Court and the Judicial Committee the provision of Article 2 of the mandate, safeguarding the civil rights of the local inhabitants, does not mean

'that all the civil rights of every inhabitant of Palestine which existed at the date of the mandate are to remain unaltered throughout its duration; for if that were to be a condition of the Mandatory's jurisdiction no effective legislation could be possible.'⁴

¹ *Ibid.*, p. 329.

² *Ibid.*

³ Quoted from the above sources.

⁴ [1926] A.C., p. 328.

Could it be inferred from this restrictive interpretation that the Judicial authority set up by the Mandatory in or for Palestine has been ousted in favour of the Executive and Legislative authorities (both of which are at present vested in the High Commissioner, subject to the instructions of the Mandatory) as far as the interpretation of the mandate is concerned? In the opinion of the Supreme Court of Palestine 'the mandate is a political and not a legal document, and likely to contain expressions of good intention which are more easy to write than to read.' It is true, as has been pointed out, that the mandate contains a good many general provisions, laying down, sometimes in vague terms, broad lines of policy which the Mandatory is to pursue. But the presence of such provisions is undoubtedly a feature of a great many treaties and other international instruments, which, however, do not cease, on that account, to be documents of at least as much legal as political character. This is even more true with regard to the mandate, the interpretation and application of which may be enforced both by the Permanent Court of International Justice, under the provision of Article 26, and the local Courts of Palestine. The Privy Council in its judgment did not dispute the principle of judicial cognizance of the mandate, but was of the opinion that such cognizance as had been rightly taken by the Supreme Court of Palestine in connection with Article 2 resulted in a misconstruction of this provision. It is therefore difficult to see how the view, however restrictive, taken by the Judicial Committee of Article 2 of the mandate would amount to rendering the above principle 'of little practical value,' or would justify the conclusion that 'in accord with British traditions, the Courts will presume that the Government in performing political and administrative acts has correctly interpreted the rather vague terms of that instrument [the

mandate].’¹ The question at issue can hardly be said to have been of such wide and general character as to involve the principle of judicial cognizance of the mandate ; it was merely one of interpretation of a given provision. ‘The key to the true purpose and meaning of the sentence quoted from Article 2 of the mandate,’ says the decision of the Judicial Committee, ‘is to be found in the concluding words of the Article “irrespective of race and religion,” and the purpose of the Article is to secure that in fulfilling the duty which is incumbent upon every Government to safeguard the rights from time to time belonging to the inhabitants of the territory the Mandatory shall not discriminate in favour of persons of any one religion or race.’² The above provision is therefore directly connected with the one embodied in Article 15 of the mandate to the effect that ‘no discrimination of any kind shall be made between the inhabitants of Palestine on the ground of race, religion or language.’ But while the latter is mainly concerned, as we shall see, with the principle of freedom of conscience, the former is of a more general character, embracing as it does all rights, civil as well as religious, individual as well as collective.

(2) COLLECTIVE RIGHTS AND INTERESTS OF THE VARIOUS COMMUNITIES

Local Autonomy (Article 3 of the Mandate).—The first collective right—if it may be so termed on the ground of its being guaranteed by a corresponding obligation assumed by the Mandatory—which is recognized as belonging to the various communities of Palestine is that of autonomous administration, as qualified in the following provision : ‘The Mandatory shall, so far as

¹ Q. Wright, *A.J.*, vol. xx. (Oct. 1926), p. 770.

² [1926] A.C., p. 328.

circumstances permit, encourage local autonomy' (Article 3). Additional importance is acquired by this provision when read together with the clause embodied in the preceding Article 2 to the effect that 'the Mandatory shall be responsible for . . . the development of self-governing institutions.' It is, indeed, understood to be the policy of the Mandatory that his duty under the latter provision, namely, to train the population towards self-government, should be carried out by means of a gradual development in local autonomy. 'It is in the organization of local rather than of central government,' says the Mandatory's Report for 1925, 'that real progress towards autonomy can be made immediately.'¹ Theoretically this is most in conformity with the general methods contemplated by the mandates system as a whole, and in fact it represents, at least for the present, practically the only course open to the Mandatory after the failure of his successive attempts to increase the share of the inhabitants in the central government of Palestine. This is pointed out in the observations of the British Government on the petition submitted by the Executive Committee of the Palestine Arab Congress to the Permanent Mandates Commission (May 1926).² The main object of this petition—in which, as pointed out by the *rapporteur*, for the first time the above Committee 'does not take up an attitude of radical and total opposition to the mandate, but merely complains of the alleged non-application of part of that mandate'³—is to draw the attention of the Permanent Mandates Commission to the alleged failure of the Mandatory to encourage local autonomy in Palestine in conformity with Article 3; and it may be of interest to note that the very same allegation—although not on the legal ground that the rights of the

¹ *Colonial*, No. 20 (1926), p. 4.

² *P.M.C.*, Minutes of 9th Session, p. 202.

³ *Ibid.*, p. 222.

inhabitants have been violated, but on the more general ground that the interests of the community have not been safeguarded—was made against the Mandatory in the petition emanating from the National Council of the Jews of Palestine.¹

No written observation was made on this point of the petition, but the general attitude of the Mandatory may be gathered from a previous statement of the British accredited representative to the Permanent Mandates Commission, to the effect that the Administration of Palestine

‘did not propose to move too fast in the matter owing to the three different races involved. It would have to pause before introducing the elective municipal system on a large scale, for, with the present state of development of part of the population, elections would merely prove a constant source of disturbance.’²

However, from the answers given by the British Government to the questionnaire of the Permanent Mandates Commission, it appears that a special Commission was appointed in 1924 to consider the question of the development of local government,³ and according to the Mandatory’s Report for 1925,

‘it is hoped at an early date to put the majority of these [Municipal and Local] Councils on an elective basis and to prepare a Municipal Ordinance which will define their powers and functions with greater precision than the existing Ottoman law.’⁴

This, as we are going to see, has been achieved by the Municipal Franchise Ordinance, 1926.⁵

Under the pre-war Turkish *régime* only part of the

¹ *P.M.C.*, Minutes of 9th Session, p. 211.

³ Appendices to the Report for 1924, *Colonial*, No. 17 (1925), p. 4.

⁴ *Colonial*, No. 20 (1926), p. 4.

² *P.M.C.*, Minutes of 7th Session, p. 111.

⁵ *O.G.* (Extraordinary), Oct. 11, 1926.

members of the municipal councils were elected, the majority being official; moreover, only Ottoman Moslems had the right either to elect or to be elected to such councils. At the beginning of the war this system was altered in favour of the appointment of municipal councillors by the district governor, and was continued in its modified form by the military administration set up by the British forces of occupation. The Local Councils Ordinance, 1921,¹ enacted under the civil administration, partly reverted to the pre-war elective system—with the fundamental difference, however, that the rights, both active and passive, conferred upon the inhabitants were no more limited to one section only of the population, as such discrimination would have been in direct opposition to the principle embodied in Article 2 of the mandate. But owing to the diversity of the elements of the population, no uniform system could, at that time, be adopted both for local and municipal organization. Wherever the question of setting up local authorities was not complicated by the co-existence in the same locality of members of different communities, provision was made, by Orders issued under the above Ordinance, for the election of such authorities by the inhabitants of the town or village concerned. As regards the municipal areas, most of which contain a mixed population, the Municipal Councils Validation Ordinance, 1925, provided that ‘pending the holding of municipal elections the district governor, with the approval of the High Commissioner, may nominate or suspend a Municipal Council or a President or any member thereof’ (Article 3).²

The Municipal Franchise Ordinance, 1926, which provides for the substitution of elected for nominated

¹ *O.G.*, No. 42, May 1, 1921. Additional provisions regarding the constitution and powers of the local councils are contained in the Local

Councils Ordinance, No. 2, 1921, *O.G.*, No. 55, Nov. 15, 1921.

² *O.G.*, No. 131, Jan. 15, 1925.

councils in the largest municipal areas,¹ marks an important step forward in the development of self-governing institutions in Palestine. The difficulty of bringing about this reform lay chiefly, as we have just seen, in the fact that the inhabitants of some of the largest municipal areas belong to more than one of the three recognized communities in Palestine. It is accordingly laid down in Article 7 (3) of the Ordinance that 'if there are among such persons [who are entitled to vote] members of all three communities . . . a separate register shall be prepared for the members of each community,' provided that 'if more than nine-tenths of such persons are members of one community, a single register shall be prepared.' And in virtue of Article 8 (2) the numbers of members to be elected from the various registers 'shall be in the same proportion as the numbers of names contained in the said registers.'²

As may be seen from these provisions, it has been found necessary to introduce a system of community representation in the municipal organization of the country. It is probably at the instance of such communities as are in a minority—and chiefly the Jewish community—that such a course has been followed, as it may have been feared that any other course would tend to prejudice their interests. Under the common register system there is, indeed, a considerable amount of risk that the communities whose members constitute a minority in each municipal area would be inadequately—if at all—represented, and in the special case of Palestine it may be said that the Mandatory was not at liberty to run the risk, in view of the provisions

¹ The number of municipalities to which municipal franchise was extended is 22. They are enumerated in a schedule attached to the Ordinance, but in virtue of Art. 2 other municipalities 'may be added by Order of the High Commissioner in

Council.'

² The drawing up of the registers of voters and the conduct of municipal elections are provided for in the Regulations issued under the Ordinance (*O.G.*, No. 176, Dec. 1, 1926).

embodied in the mandate safeguarding the rights and interests of the various communities.¹

Freedom of Conscience and Communal Organization.— Closely connected with the question of local and municipal organization is, to use the terms of the Mandatory's Report, 'the regulation of those organs of the several communities' which are to be entrusted with the 'cultural functions of local government.' The question of communal organization is, indeed, but another aspect of the duties assumed by the Mandatory, under Article 3 of the mandate, with regard to local autonomy. 'By these organs,' says the Report, 'Moslems, Christians and Jews will be enabled to conduct freely and separately their communal affairs, leaving to municipal bodies those enterprises in which Arabs and Jews can profitably combine on a basis of common interest.'² In eliminating 'cultural functions' from the competence of local and municipal authorities and entrusting them to communal organs, the Mandatory has no more than followed the general lines of what has been known as the *Millet* system under the Turkish *régime*. *Millet* was the term given to distinct religious communities having in most cases also some national characteristics of their own. The *Millet* enjoyed a considerable amount of autonomy in the conduct of its internal affairs, and mainly in the administration of its own religious law, in matters of personal status, such as marriage and divorce, and with regard to wills, bequests, wakf, etc. We have seen that this principle was largely embodied in the Palestine Order in Council, 1922, in the provisions dealing with the establishment of the Religious Courts of the various communities. On the other hand, a special provision was inserted in this Order which clearly illustrates, as we shall see, the connection existing between the

¹ The opposite view seems to be held by J. O. Wedgwood in his recently published book, *The Seventh*

Dominion, pp. 19-21.

² *Colonial*, No. 20 (1926), p. 4.

question with which we are concerned here and one of the fundamental principles of the mandates system as a whole, namely freedom of conscience, which is expressly guaranteed in virtue of Article XXII of the Covenant.

The question of freedom of conscience and religion has a somewhat different aspect in Palestine as compared with the mandated territories of the other categories. In the latter, where the majority of the population is still, as a rule, in the primitive stages of religious development, the provisions of the various mandates were mainly intended to secure equal opportunity for the religious missions of the interested States both in Europe and America. As regards Palestine, however—and this is also true of Syria—it is primarily in the interests of the various local communities, as we shall see, that provision was made for freedom of conscience and religion; this is indeed of vital importance in a country where the distinction between the various sections of the population—both in law and in fact—is largely drawn along general lines of a religious character. On the other hand, a special provision is inserted in the Palestine mandate to the effect that

‘the Mandatory shall be responsible for exercising such supervision over religious or eleemosynary bodies of all faiths in Palestine as may be required for the maintenance of public order and good government. Subject to such supervision, no measures shall be taken in Palestine to obstruct or interfere with the enterprise of such bodies or to discriminate against any representative or member of them on the ground of his religion or nationality’ (Article 16).

A comparison between this provision and that of Article 7 or 8, as the case may be, of the B mandates seems clearly to indicate the difference in aspect referred to above. While the first places in the foreground the

obligation of the Mandatory to supervise the various religious bodies—in which missions seem to be included—the latter is mainly concerned with the enumeration of the rights that are to be accorded to the religious missions ‘to enter the territory and to travel and reside therein, to acquire and possess property, to erect religious buildings and to open schools throughout the territory.’ This difference, however, does not mean that the Mandatory is entitled to exclude such missions from Palestine, although the right of entry is not expressly guaranteed to them in the above Article 16, as in the case of the B mandates. Such right seems, indeed, to be implied in the general terms of another provision of the mandate for Palestine, stipulating that ‘no person shall be excluded from Palestine on the sole ground of his religious belief’ (Article 15, paragraph 1 *in fine*).

Freedom of conscience constitutes one of the main rights of the various communities of Palestine; Article 15 of the mandate provides that

‘the Mandatory shall see that complete freedom of conscience and the free exercise of all forms of worship, subject only to the maintenance of public order and morals, are ensured to all.’

In pursuance of this Article it is stipulated in the Palestine Order in Council, 1922, that

‘all persons in Palestine shall enjoy full liberty of conscience and the free exercise of their forms of worship, subject only to the maintenance of public order and morals. Each religious community recognized by the Government shall enjoy autonomy for the internal affairs of the community, subject to the provisions of any Ordinance or Order issued by the High Commissioner’ (Article 83).

Freedom of conscience and communal autonomy, which are both dealt with in the same provision, are, indeed,

intimately connected, and the question arose whether the former should be so extended as to imply the recognition of a right of separate organization to parts or sections of any given community, on the ground that their religious convictions are not fully shared by the majority of the community to which they belong. Article 83 of the Palestine Order in Council provides no answer to this question, since it speaks only of such religious communities as have been 'recognized by the Government,' and contains no indication whatever as to circumstances in which the Mandatory would consider it to be his duty to grant the required recognition. Three main communities are officially recognized in Palestine; these are, in order of the respective numbers of their members, the Moslem, the Jewish and the Christian. But besides there is a number of smaller communities, such as the Druse, the Samaritan, etc., as well as a variety of religious sects and beliefs within the above main communities, especially among the various Christian Churches. Has any such sect or group the right to claim recognition as a separate community within the meaning of the above Article 83 of the Palestine Order in Council?

The question was brought to the notice of the Permanent Mandates Commission, at its seventh session, by a petition emanating from the *Ashkenasic* Jewish community of Jerusalem, in which it was chiefly alleged that the proposed community organization

'threatens the existence of the orthodox community, it deprives Jewish inhabitants of freedom of religion and conscience and endangers the possibility of observing religion in communal life in Palestine in future.'¹

¹ *P.M.C.*, Minutes of 7th Session, p. 182. An instance illustrating to what extent questions of local autonomy and freedom of conscience may be connected is to be found in the allegation of the peti-

tioners that clauses 'such as giving women active and passive right of election, which is not practised in any existing Jewish community,' are 'against Jewish morals and religion' (*ibid.*).

This petition was supported by a memorandum from *Agudath Israel* submitted at the ninth session of the Permanent Mandates Commission, in which the fear was expressed lest the Mandatory

‘may adhere to the principle of the unity of the Jewish religious community and may thus, contrary to the most elementary rights of the freedom of conscience and worship, abolish the right to found independent religious communities.’¹

From the oral statements of the British accredited representative, as well as from the Mandatory’s communications to the Permanent Mandates Commission, it appears, however, that no such right ever existed under the Turkish *régime* in favour of any such group as was represented by the petitioners, and that, consequently, there can be no question of its abolition. As to the mandate, while it expressly guarantees freedom of conscience and religion to all the inhabitants of Palestine, it does not provide for any special right to autonomous organization by each section of the community. This, indeed, as pointed out by the British representative, ‘would lead to chaos,’ presumably alluding to the fact that Article 15 of the mandate makes freedom of conscience and religion subject to the maintenance of public order. The principle that the Mandatory is under no obligation to grant community status to the various religious groups or sects that either exist or may be formed in Palestine, is clearly implied in the Religious Communities Organization Ordinance, 1926,² which has since been enacted under the provisions of the above-quoted Article 83 of the Palestine Order in Council, 1922. Article 2 of the Ordinance provides that

‘if any religious community in Palestine makes application under this Ordinance, the High Commissioner in

¹ *P.M.C.*, Minutes of 9th Session, pp. 195-196.

² *O.G.*, No. 157, Feb. 15, 1926.

Executive Council *may*,¹ with the approval of one of His Majesty's Principal Secretaries of State, make, and when made vary or revoke, regulations for its organization as a religious community and its recognition as such by the Government of Palestine.'

Subject to such approval, recognition of community status is therefore left to the discretion of the High Commissioner, which in this case had in fact already been exercised when the group represented by the above petitioners was informed that 'while there would be no interference with its existence as a separate congregation, it could not be recognized as a separate community or be given any official communal status.'² It is not stated what exactly is implied by such status, except that any recognized community may form religious and cultural councils or boards, acquire and hold immovable and movable property, enter into contracts, impose upon its members such contributions as may be necessary for communal purposes 'recoverable in the same way as municipal taxes and fees.' The above Ordinance, indeed, is mainly an Enabling Law providing that 'separate regulations shall be made in each case, suited to the special circumstances and organization of the community concerned.' It is only, therefore, when such regulations have been enacted concerning the Jewish community in Palestine that the Permanent Mandates Commission will be in a position to say whether or not there has been any infringement of the principle of freedom of conscience, as alleged by the authors of the above petition and memorandum.³ It may, however,

¹ The italics are the author's.

² *P. M. C.*, Minutes of 9th Session, p. 198.

³ Since this book went to the publishers, the Jewish Community Regulations have been issued (*O. G.*, No. 202, Jan. 1, 1928) under the above-quoted Article 2 of the Religious Communities Ordinance, 1926,

providing for the organization of the Jewish 'religious community and its recognition as such by the Government of Palestine' (Preamble, paragraph 2).

In virtue of the Regulations the organs of the community include: a Rabbinical Council and local Rabbinical Offices (mainly concerned

already be pointed out that it seems to be the opinion of both the Mandatory and the Commission that the recognition of the above principle does not imply *ipso facto* the right to separate communal organization.

Educational Autonomy.—Another question connected both with autonomous administration and freedom of conscience is that of education, referred to in Article 15, paragraph 2 of the mandate in the following terms :

‘The right of each community to maintain its own schools for the education of its own members in its own language, while conforming to such educational requirements of a general nature as the Administration may impose, shall not be denied or impaired.’

This right has been recognized by the Palestine Government and exercised by the various communities—mainly Jewish and Christian. For the purposes of the above provision, the term ‘community’ seems to have been

with the application of Jewish law in matters regarding wills and charitable endowments or in arbitration of disputes between members of the community ‘where a written submission of the parties has been obtained’—Article 10); an Elected Assembly ‘representative of the community, of which the members shall be elected for a term of three years’ (the main duty of the Assembly is to ‘prescribe the system of collection and maximum amount of any rate or fee which may be levied or charged under these Regulations in an Order which shall be submitted annually to the High Commissioner for approval’—Article 13, paragraph 4); a General Council to be elected each year from among the members of the Assembly (‘it shall act’—provides Article 14, paragraph (c))—‘as the representative of the community in its relations with the Government and it shall be responsible for the administration of such affairs and activities as are entrusted to it by the Government’); Committees of local communities

(each being, in virtue of Article 24, paragraph (b), ‘the recognised representative of the community before the District Administration in matters which are within the competence of the local community’).

The organization and functions of each of these organs are dealt with in detail by the Regulations. Particular attention is paid to the Register which the General Council is to draw up of all adult Jews in Palestine (Articles 17 and 18). It is left to every individual Jew to decide for himself whether or not he wishes to belong to the organized Jewish community, and complete guarantee is given to any person who desires his name to be struck off the Register or ‘alleges that his name is wrongfully included’ in it. The principle of freedom of conscience seems, therefore, to have been fully safeguarded in the Regulations, and the Permanent Mandates Commission will probably be given an opportunity to express its opinion on the matter at its forthcoming session.

taken by the Administration in its widest meaning, and there is little doubt that any section or group could freely establish and maintain its own schools in Palestine. Educational autonomy, indeed, is in no way dependent upon the recognition of what has been termed above 'community status,' except in so far as such autonomy may in fact be affected by the provision that contributions 'recoverable in the same way as municipal taxes or fees' can only be imposed by those sections of the population to which community status has been granted.

There is nothing in the above-quoted provision of Article 15, paragraph 2 of the mandate to prevent the Palestine Administration from establishing its own schools, provided no discrimination is made between the various communities and the government schools are open to all the inhabitants of Palestine without distinction on grounds of race, religion or language. The fact that one community is making use of the existing government schools while the other chooses to exercise its right under the above provision has, of course, nothing to do with discrimination, unless special facilities or privileges are granted to any given community as compared with the others, from the financial or educational point of view. Again, there can be no question of discrimination if, as a consequence of the fact that a certain community has preferred the government schools to its own, the Administration has had to adapt its schools to the requirements of that particular community. The fact, for instance, that the government schools in Palestine became in many respects practically Arab schools, and that the language of instruction in these schools is Arabic throughout,¹ does not constitute in itself any discrimination, so long as the Administration is ready to introduce the necessary changes if and when

¹ *Colonial*, No. 12 (1925), p. 28.

any non-Arab community should decide to renounce its right under Article 15, paragraph 2. This right, indeed—like all other rights—may be renounced, and consequently an additional responsibility may be placed upon the Administration to provide for the educational needs of any such community. It is for this practical consideration mainly that the Administration would be well advised to encourage the various communities in establishing their own schools and to assist them adequately in their maintenance.

The question of the Government's contribution towards the schools established by the various communities in Palestine was dealt with by the Permanent Mandates Commission at its seventh and ninth sessions, in connection with the memoranda and covering letters submitted by the Zionist Organization. It was maintained in these communications that the Jews in Palestine should receive from the Administration for educational purposes a share proportionate to their numbers; in other words, that the proportion between the amount of the grants-in-aid to Jewish schools and the total sum appropriated by the Administration to education should be based on such fraction of the local population as the Jewish community in Palestine may from time to time represent.¹ The Mandatory, however, declared in his observations that he was

'unable to accept the contention that the Palestine Government are under any obligation to ensure that in any head of expenditure of the Palestine estimates the amount of money devoted to the needs of service of a particular part of the people of Palestine should be proportionate to the size of that part.'²

Indeed, no obligation whatever is laid in the mandate

¹ *P. M. C.*, Minutes of 7th Session, p. 184, and Minutes of 9th Session, p. 200.

² *P. M. C.*, Minutes of 7th Session, p. 193.

upon the Administration to contribute towards the maintenance of the schools established by the various communities, and the Mandatory's contention may further be corroborated by the fact that Article 15, paragraph 2, speaks of 'the right of each community to *maintain* its own schools,' thus presumably indicating that the responsibility for the maintenance of their schools lies with the communities themselves.¹ Moreover, to recognize the above principle, as suggested by the Zionist Organization, would be to imply that the existing government schools in Palestine are Arab schools not only in fact but also in principle, since they would receive from the education budget a share proportionate to the members of the Arab community. Discrimination could have been imputed to the Administration only if the latter had not treated on an equal footing the schools of the various communities as compared with each other; this is, however, not the case, since the grants-in-aid are made on a *per capita* basis, according to the number of pupils in the schools maintained by the various communities.²

Official Languages and Holy Days.—Two more provisions of the mandate are connected with the collective rights of the various communities; they are respectively embodied in Articles 22 and 23, which read as follows:

Article 22.—'English, Arabic and Hebrew shall be the official languages of Palestine. Any statement or inscription in Arabic on stamps or money in Palestine shall be repeated in Hebrew, and any statement or inscription in Hebrew shall be repeated in Arabic.'

Article 23.—'The Administration of Palestine shall recognize the holy days of the respective communities in Palestine as legal days of rest for the members of such communities.'

¹ It may be pointed out, however, for 'maintain.' that the word '*conserver*' is used in the French version of the mandate

² *Colonial*, No. 20 (1926), p. 29.

In pursuance of the first of these provisions, Article 82 of the Palestine Order in Council, 1922, lays down that

‘all Ordinances, official notices and official forms of the Government and all official notices of local authorities and municipalities in areas to be prescribed by order of the High Commissioner, shall be published in English, Arabic and Hebrew. The three languages may be used in the debates and discussions in the Legislative Council and, subject to any regulations to be made from time to time, in the Government offices and the Law Courts.’

A distinction is thus made between the central government, where the three languages are to be used in virtue of the Order in Council itself, and the local authorities, where the use of all or part of the official languages is to be prescribed by the High Commissioner. The Regulations regarding the use of official languages¹ prescribe that the three official languages shall be simultaneously used only in the central government and in the areas of mixed population; the latter two—Arabic and Hebrew—are, however, to be only alternatively used in areas of mainly homogeneous population belonging to the Arab or Jewish community respectively.

Owing to the fact that by far the largest part of Palestine is populated with Arabs, the language which is the more frequently eliminated under the Regulations is at present the Hebrew language. But there seems to be no inconsistency between the Regulations and Article 22 of the mandate. As has been pointed out by the Permanent Mandates Commission, such cases as may have given rise to complaints, mainly on the part of the Jewish community, are inevitable in a country in which there are three official languages.² On the whole, it may be said that the Mandatory's attitude towards Hebrew is still based on the principle that its recog-

¹ *O.G.*, No. 28, Oct. 1, 1920.

² *P.M.C.*, Minutes of 9th Session, p. 229.

dition 'as an official language is provided for in Article 22 of the [then] draft mandate for Palestine, in pursuance of the policy of the establishment in that country of a national home for the Jewish people.'¹

In a comparatively recent case the Supreme Court of Palestine was concerned with the interpretation of the above Article 22 of the mandate, and mainly with its provision that 'any statement or inscription in Arabic on stamps or money in Palestine shall be repeated in Hebrew' and *vice versa*. The Palestine stamps, as well as all official documents and forms, contain the inscription 'Palestine' in the three official languages, but the Hebrew inscription is followed by the letters *Alef-Yod*, being the initials of *Eretz-Israel* (Land of Israel). The Supreme Court was asked for an injunction against the Administration prohibiting the use of the above initials as being contrary to the provisions of Article 22 of the mandate. The Court, however, was of the opinion that 'the form of the word Palestine in each language was a matter of administrative discretion,'² and consequently refused to grant the injunction. Moreover, it could hardly be maintained that the words 'repeated in Hebrew' used in the above Article 22 merely mean 'repeated in Hebrew characters'; what was obviously meant is 'repeated in the Hebrew language.' 'Palestine' in Hebrew is, and has always been, called *Eretz-Israel*, so that, whether on the ground of administrative discretion or of the interpretation of Article 22, no other decision, as it seems, could have been adopted by the Supreme Court. When the same question came before the Permanent Mandates Commission, at its ninth session, in connection with the petitions of the Executive Committee of the Palestine Arab Congress, it was stated by the British accredited representative that the

¹ *Cmd.* 1700 (1922), p. 10.

² See *A.J.*, vol. xx. (Oct. 1926), p. 770.

Administration of Palestine had agreed to the above inscription on the ground that 'the Hebrew name for the country was the designation "Land of Israel"'¹; this is equally the view taken by the *rapporteur* of the Commission when he said that it was only an 'existing custom' which has been 'approved by the Government.'²

While the question of the official languages is mainly of a national character, that of the holy days, dealt with in Article 23 of the mandate, is chiefly connected with freedom of conscience and religion.³ This explains why it is that, while the number of the official languages has been limited to those of the two main national communities in Palestine, the Arab and the Jewish (in addition to the language of the Mandatory), the holy days officially recognized by the Administration extend to practically all the various communities, large or small. Thus, for instance, Armenian holy days have been recognized as official days of rest for the members of that community living in Palestine.⁴

The term 'community' in Article 23, as in Article 15, is to be interpreted in its widest sense. Indeed, the principle of freedom of conscience and religion, under

¹ *P.M.C.*, Minutes of 9th Session, p. 163.

² *Ibid.*, p. 223.

³ Quite recently the provisions of the mandate regarding holy days and freedom of conscience and religion have been dealt with by the Palestine Courts, when a by-law of the township of Tel-Aviv was held to be inconsistent with the principle laid down in Article 15 of the mandate that 'no discrimination of any kind shall be made between the inhabitants of Palestine on the ground of race, religion or language.' From an answer to the *Questionnaire* of the Permanent Mandates Commission it appears that the by-law in question was approved by the Government of Palestine and that it prohibited the opening of shops by Jews, within the township of Tel-Aviv, on the Sabbath or on Jewish Festivals, while Moslem and

Christian shops were exempt (see *Colonial*, No. 26, p. 86). The sentence passed by the Tel-Aviv Court on the Jewish shopkeeper for contravening the by-law was accordingly annulled on appeal by the Jaffa District Court (see *The Times*, Feb. 10, 1928). The judgment of the latter was subsequently confirmed on appeal (*ibid.*, May 29, 1928). On the other hand, it may be pointed out that the principle of freedom of conscience, as we have seen, is subject to the maintenance of public order and morals, and in certain cases the question as to what these morals are may best be left to those concerned. This, however, involves the whole issue of autonomous administration, in regard to which the Mandatory is guided by considerations of quite a different nature.

⁴ *Colonial*, No. 17 (1925), p. 14.

which the question of the holy days mainly falls, applies, as we have seen, to all the inhabitants of Palestine, to whatever community they may belong.

5. INTERNATIONAL STATUS OF PALESTINE

The Principle of Distinct International Status.—The obligations of the Mandatory in connection with the international status of Palestine have mainly been assumed in the interest of the mandated territory, although they may also concern third Powers and the League of Nations itself. The main object of these obligations is to secure for Palestine the necessary advice and protection in the conduct of its external relations, just as other obligations have been accepted by the Mandatory in order to guide the territory in the conduct of its internal affairs. The mandates system would have been at least incomplete, if not altogether unworkable, had the Mandatory not been provisionally entrusted with the control of the external as well as the internal affairs of the territory under his mandate. This, however, does not mean that either internally or externally the Mandatory is wholly substituted for the mandated territory. In the early stages of the mandates system some doubts prevailed on that point, but it seems to be universally established now, both in theory and in practice, that the status of the mandated territories is distinct from that of their respective Mandatories. Without entering here into the theoretical foundation of this principle, it may be safely stated that the distinct international status of mandated territories is a direct consequence of the admission—now practically universal—that sovereignty over these territories is not vested in the mandatory Powers, although in the great majority of cases the latter may, and in fact do, exercise such attributes as are usually exercised by sovereign States,

This is equally the case in Palestine. We have seen that in virtue of Article 1 of the mandate the Mandatory has 'full powers of legislation and of administration,' and with regard to the external affairs of the territory it is provided in Article 12 that 'the Mandatory shall be entrusted with the control of the foreign relations of Palestine and the right to issue exequaturs to consuls appointed by foreign Powers.' However wide such control may be—amounting even to the apparent absorption of the territory within the mandatory State—there is little doubt that, for all legal purposes, Palestine constitutes a distinct international entity. It does not form part of the Mandatory's dominions.¹ 'I am not sure,' said the Secretary of State for the Colonies, 'that Palestine is in the full sense of the word in the British Empire.'² In common with the other territories detached from Turkey, Palestine is referred to as a 'State' in the Treaty of Sèvres and—though less frequently—in the Treaty of Lausanne; such, indeed, is its juridical position. It is, however, if one may use the expression, an infant State, under the guardianship of the Mandatory. It is represented by the Administration of Palestine, whatever the composition of that body from time to time may be—as distinguished from, but under the effective control of, the Mandatory. As pointed out by the Permanent Court of International Justice, 'the international obligations of the Mandatory are not, *ipso facto*, international obligations of Palestine,'³ and the control provided for in the above Article 12 of the mandate was mainly intended as a safeguard against any possible breach of the Mandatory's obligations by the Government for the time being representing Palestine.

¹ See, among others, L. Oppenheim, *op. cit.*, vol. ii, p. 144, note 3, and A. V. Dicey and A. Berriedale Keith, *Conflict of Laws*, p. 170.

² *P.D.* (H. of C.), vol. 203, col. 823. This is part of an answer

given to a question as to 'why British subjects are not allowed to vote for or to sit on municipal councils in Palestine' (*ibid.*).

³ *P.C.*, Series A, No. 2, p. 23.

In virtue of Article 12 it is the Mandatory who will be held directly responsible for any such breach.

The main consequences of the principle of distinct international status will be dealt with under the following headings :

- (1) National Status of the Inhabitants of Palestine and their Diplomatic Protection (Articles 7 and 12 of the mandate).
- (2) Application of Treaties and Conventions to Palestine (Articles 10, 19 and 20).

(1) NATIONAL STATUS OF THE INHABITANTS OF PALESTINE AND THEIR DIPLOMATIC PROTECTION

National Status of the Inhabitants of Palestine: The Nationality Provisions of the Treaties of Sèvres and Lausanne and the Palestine Citizenship Order, 1925.—There has never been any serious doubt as to the distinct character of the national status of the inhabitants of the territories detached from Turkey and placed under mandate. When the question of national status came before the Council of the League and the Permanent Mandates Commission, the only territories concerned were those belonging to the B and C categories of mandates; the case of the A category was considered as definitely settled both by the implied meaning of Article XXII, paragraph 4 of the Covenant, speaking of 'independent nations' that 'can be provisionally recognized,' and the express provisions of the Treaty of Sèvres. Article 123 of the treaty provides that

'Turkish subjects habitually resident in territory which in accordance with the provisions of the present treaty is detached from Turkey will become *ipso facto*, in the conditions laid down by the local law, nationals of the State to which such territory is transferred.'

We have just seen that in various provisions of the Treaty of Sèvres the territories detached from Turkey are spoken of as States—whether their independence was definitely recognized, such as the Hedjaz, or only ‘provisionally,’ such as the areas placed under mandate. There can therefore be no doubt that the above expression of Article 123, ‘State to which such territory is transferred,’ refers to the newly constituted States and not to the Mandatories, as it does in the Treaty of Versailles.¹ Moreover, had the above expression referred to the mandatory Power, there would have been as a result no mention whatever in the Treaty of Sèvres of the national status of the inhabitants of the territories which on being detached from Turkey have not been placed under the mandates system, such as the Hedjaz and—at that time—Armenia and Azerbaijan. The above provision of Article 123 of the Treaty of Sèvres was inserted *verbatim* in the Treaty of Lausanne (Article 30) substituted for it; and although this treaty does not always refer to the territories detached from Turkey as ‘States,’ it seems to be an elementary rule of interpretation that if a given term or formula is created under a certain treaty and subsequently transcribed word for word into another treaty, such term or formula preserves its original meaning or construction, unless otherwise stated. In other words, the verbal transcription of Article 123 of the Treaty of Sèvres into Article 30 of the Treaty of Lausanne could not have resulted in the modification of its original contents save by an express provision to this effect or the alteration of its wording. It was therefore clear from the outset that the national status of the inhabitants of the territories under A mandate was to be wholly distinct from that

¹ See, among others, Art. 256, para. 1, in connection with the term ‘State,’ and Art. 257, para. 2, with reference to the word ‘trans-

ferred.’ As to the interpretation of these Articles see J. Stoyanovsky, *op. cit.*, pp. 71-72 and 211-212.

of the nationals of their respective Mandatories. Moreover, as far as Palestine is concerned, Article 129 of the Treaty of Sèvres expressly referred to 'citizens of Palestine,' and 'Palestinian citizenship' is mentioned in the final provisions of Article 7 of the mandate.

Another point connected with Article 30 of the Treaty of Lausanne (Article 123 of the Treaty of Sèvres) is that of the interpretation of the expression 'habitually resident,' which is the translation of the term '*établis*' in the French authentic version. This term had already given rise to difficulties of interpretation when Article 2 of the convention relating to the exchange of Greek and Turkish populations, concluded on January 30, 1923, and subsequently attached to the Treaty of Lausanne, came before the Permanent Court of International Justice for an advisory opinion. In virtue of this Article there were excluded from the compulsory exchange, among others, 'all Greeks who were already established (*établis*) before the 30th October, 1918, within the areas under the Prefecture of the City of Constantinople,' etc.; and according to the opinion of the Permanent Court, two essential factors are embraced in the above term, 'residence and stability, *i.e.* an intention to continue the residence in a particular place for an extended period.'¹ It is further said that

'an idea akin to that just expressed in order to define the conception of establishment is the basis of the conception of domicile in several modern legal systems. But it in no way follows . . . that the two expressions have the same meaning. . . . The question whether a provision refers to a mere situation of fact or to domicile in the legal sense of the term is a question of interpretation.'²

Thus the question whether the term '*établis*' or 'habitually resident' in Article 30 of the Treaty of Lausanne

¹ *P.C.*, Series B, No. 10, p. 18.

² *Ibid.*, p. 19.

refers to a situation of fact or to domicile in the legal sense is one of interpretation.

The following are the main arguments in favour of the opinion that establishment *de facto* is referred to in Article 30 of the treaty.

1. According to the advisory opinion of the Permanent Court the term '*établis*' in Article 2 of the above convention 'refers to a situation of fact constituted, in the case of persons in question, by residence of a lasting nature.'¹ Both the convention and the treaty being parts of the same series of the Lausanne documents, it may be said that the term '*établis*' in Article 30 of the treaty is to be interpreted on similar lines to those of Article 2 of the convention.

2. Had the authors of the Treaty of Lausanne meant to refer in Article 30 to the domicile of Turkish subjects whose nationality is to be affected by the transfer of territory, the term '*domiciliés*' and not '*établis*' would have been used. It is therefore maintained that the latter was employed to the exclusion of the first.²

On the other hand, the following may be said in favour of the second solution, namely, that what the term '*établis*' of the above Article 30 refers to is not necessarily an establishment *de facto*, an actual residence, but a situation similar to that which is contemplated by the term 'domicile' in its legal sense.

1. The Permanent Court has expressly stated that it 'has not to define the meaning and scope of the word "established" (*établis*) in the abstract, but only to determine the meaning and scope of that word as used in Article 2 of the Convention of Lausanne.'³ The

¹ *P.C.*, Series B, No. 10, p. 26.

² This seems to be the opinion of N. Bentwich, who says that in the above Art. 30 of the Treaty of Lausanne 'the basis of change of nationality is not domicile but habitual residence' and quotes the

instance of Cyprus, where the same criterion was adopted on the annexation of the island by Great Britain during the war (*Nationality in Mandated Territories Detached from Turkey*, in *B.Y.* (1926), p. 97).

³ *P.C.*, Series B, No. 10, p. 17.

opinion of the Court with regard to the interpretation of Article 2 of that convention can therefore have no bearing on the interpretation of Article 30 of the Treaty of Lausanne.¹ Moreover, the situations in these two cases are wholly different. In the one case there can be no question of exchange of population unless persons belonging to such populations are actually established in the areas contemplated in Article 2 of the convention; actual residence at the time when the exchange takes place is obviously a condition *sine qua non* of the application of the above Article 2. This is, however, not the case with regard to changes in nationality consequent upon a transfer of territory; the factors that are usually relevant in such cases are those of origin and domicile. The difference in the respective situations may equally be illustrated by the fact that, while in the first case there is an express mention of a date—that of the Moudros Armistice (October 30, 1918)—upon or prior to which effective establishment had to take place for the purpose of the provision of the Lausanne Convention, no such, or any other, date is contemplated in Article 30 of the treaty. Moreover, the term ‘*établis*’ has been translated into ‘established’ in the first case and ‘habitually resident’ in the second; although the English version is not the authoritative one, the fact that the same term has been differently translated may illustrate the difference of construction placed upon the word ‘*établis*’ in the two cases in question.

2. As regards the second point, namely, why the term ‘*domiciliés*’ was not used in the treaty if its authors really intended to refer to ‘domicile’ in the provision of Article 30, it may be said that the term ‘*établis*,’ which has not yet acquired such a technical meaning as ‘*domiciliés*,’ was used in preference to the latter in

¹ This is equally implied in a reference made to the above Art. 30 by the Permanent Court, *ibid.*, pp. 22-23.

order to avoid any reference to particular legal systems. The French version of the treaty being the authoritative one, the use of the term '*domiciliés*' might have been construed as implying some reference to the French law of domicile—a possibility which perhaps was meant to be avoided. In using the term '*établis*' it was probably intended to refer to what the Permanent Court has found to be its two constituent factors, namely residence and stability, which are equally at the basis of the term 'domicile,' without involving the technicalities of the latter. Moreover, the two terms 'habitually resident' and '*domiciliés*' are used for one another in the English and French versions respectively of other treaties concluded after the war, such as the treaty of peace with Poland (Articles 3 and 4), and with Bulgaria (Article 51).

It seems, however, that this was not the interpretation given to the above expression 'habitually resident' in the nationality law of Palestine enacted in virtue of Article 7 of the mandate and under the provisions of the Treaty of Lausanne. Indeed, Article 1, clause (1) of the Palestine Citizenship Order in Council, 1925,¹ provides that 'Turkish subjects habitually resident in the territory of Palestine upon the 1st day of August, 1925, shall become Palestinian citizens.' The insertion of a fixed date upon which Turkish nationals had to be 'habitually resident' in Palestine in order to be able to acquire or to claim Palestinian citizenship does not only constitute an additional condition² for the acquisition

¹ O. G., No. 147, Sept. 16, 1925.

² It is provided in Art. 30 of the Treaty of Lausanne that the change of nationality in the territories detached from Turkey will be effected 'in the conditions laid down by the local law.' It is certain, however, that mainly technical questions and matters of procedure, such as the form of ascertaining Turkish nationality or of registering the new one,

were contemplated by the word 'conditions,' and it may be open to doubt whether the additional stipulation inserted in Art. 1, clause (1) of the Palestine Citizenship Order falls within its meaning. In this connection it may be of interest to mention that the nationality law in Syria, enacted in the form of *arrêts* (decrees) by the French High Commissioner, merely applies the pro-

of that citizenship but also reacts on the interpretation of the above term. It conveys the impression that in order to be admitted to Palestinian citizenship the former Turkish subject had actually to be resident in Palestine on the above date, 'habitually' being added merely for the purpose of preventing the acquisition of such citizenship by those who only happened to be in Palestine on August 1, 1925, or might have come there with the sole intention of acquiring Palestinian citizenship. Such an interpretation means that former Turkish subjects who for one reason or another left Palestine before August 1, 1925 (and were not in possession of provisional certificates of citizenship which were issued in 1922 for purposes of the elections to the Legislative Council) became stateless (*heimatlos*), having on the one hand lost their Turkish nationality in virtue of Article 30 of the Treaty of Lausanne and, on the other, not being admitted to Palestinian citizenship, according to the local law.

The subsequent Articles of the treaty, 31 to 34, deal with the right of option accorded to the following three categories of persons :

1. 'Persons over eighteen years of age¹ losing their Turkish nationality and obtaining *ipso facto* a new nationality under Article 30, shall be entitled within a period of two years from the coming into force of the present treaty² to opt for Turkish nationality' (Article 31).

This Article seems to require no special comment, as the right of option for which it provides is common

visions of the treaty without modification (see N. Bentwich, *op. cit.*, in *B.Y.* (1926), p. 107). As to the nationality law of Iraq, 'it defines habitual residence in Iraq so as to include every person who has had his usual place of residence there since August 23, 1921' (*ibid.*, p. 108). The elasticity of this provision, as compared with the rigid character of

Art. 1, clause (1) of the Palestine Citizenship Order, seems to be more in keeping with the general interpretation of Art. 30 of the Treaty of Lausanne.

¹ Under that age they are considered as minors and follow the status of their parents (Art. 36).

² *I.e.* not later than August 6, 1926.

to practically all treaties in virtue of which transfer of territory is effected.

2. 'Persons over eighteen years of age, habitually resident in territory detached from Turkey . . . and differing in race from the majority of the population of such territory, shall, within two years from the coming into force of the present treaty, be entitled to opt for the nationality of one of the States in which the majority of the population is of the same race as the person exercising the right to opt, subject to the consent of that State' (Article 32).

The same principle is to be found at the basis of similar provisions inserted in the treaties of peace with Austria (Article 80) and Hungary (Article 64). Turkey, like the former Austro-Hungarian Monarchy, contained before the war various national and racial entities without corresponding States, and upon the dislocation of its Empire it was intended that persons of the above category should be given an opportunity to become citizens of those States to which they might respectively belong *qua* nationality or race. This is a direct consequence of the principles of nationality and self-determination in the name of which, if not always in strict accordance with it, predominantly national States have been set up on the ruins of the above States.

In the above two cases of option, as contemplated in Articles 31 and 32 of the treaty, the optants must within the succeeding twelve months transfer their place of residence to the State for which they have opted (Article 33, paragraph 1). They are, however, 'entitled to retain their immovable property in the territory of the other State where they had their place of residence before exercising their right to opt' (*ibid.*, paragraph 2).¹

¹ 'Place of residence' in both paragraphs 1 and 2 is the translation of the word '*domicile*' in the French version. This seems greatly to strengthen the contention that the persons referred

to in Articles 31 and 32 are those who had their '*domicile*' in territories detached from Turkey, and that the expression '*habitually resident*' was to be interpreted in this sense.

As far as Palestine is concerned, the provisions of Articles 31, 32 and 33 have been inserted in Article 1, clauses (2) and (3) of the Citizenship Order. It seems, however, that Article 32 of the treaty (Article 1, clause (3) of the Order) can apply in the case of Palestine only in so far as it entitles persons of the category concerned to cease to be Palestinian citizens ; as it stands, it can have no practical effect in the case of persons wishing to opt for that citizenship. Indeed, a former Turkish subject, say Persian by race, habitually resident in Palestine could in virtue of the above provision opt for Persian citizenship, since he (*a*) differs by race from the majority of the population in Palestine, and (*b*) belongs to the race of the majority of the population in Persia. On the other hand, the majority of the population in Palestine being Arab, the only persons from outside that territory who could opt for its citizenship are those belonging to the Arab race ; such persons, however, are precluded from doing so on the ground that they do not differ in race from the majority of the population in any of the territories detached from Turkey in which they may happen to reside. It seems, therefore, that Arabs are in fact excluded from the scope of Article 32 of the Treaty of Lausanne, and that, except for the right to retain their previous Turkish nationality, they can only be citizens of the State or territory detached from Turkey in which they habitually reside. As regards Jews habitually resident in territory detached from Turkey, they are equally precluded from exercising the right of option provided for in Article 32 of the treaty. It has been said ¹ that this option 'has its basis in the existence within the former Ottoman Empire of various races, most of which have to-day a national centre in which the majority of the population belong to their race,' and that the Jewish race, which

¹ N. Bentwich, *op. cit.*, in *B. Y.* (1926), p. 98.

does 'not possess state rights in any territory,' forms an exception. It seems, however, that, as far as Palestine is concerned, the assertion that Jews do not possess state rights should be subject to some qualification if it is not to be called into question. If it means that there is nowhere such a thing as a Jewish citizenship, then it is a fact which cannot be disputed, being equally true with regard to Palestine, as we have seen. But if the possession of 'state rights' is connected with that of a 'national centre,' as the above quotation suggests, then it may be said that such a centre is provided by the Jewish national home in Palestine. In this case it would be true to say that what precluded Jews habitually resident in any other territory detached from Turkey from opting for Palestinian citizenship was the fact that Jews do not constitute the majority of the population of Palestine.

3. The third category of persons who were accorded a right of option under the Treaty of Lausanne is constituted by

'Turkish nationals of over eighteen years of age who are natives of a territory detached from Turkey under the present treaty and who on its coming into force are habitually resident abroad.' They 'may opt for the nationality of the territory of which they are natives, if they belong by race to the majority of the population of that territory, and subject to the consent of the Government exercising authority therein'¹ (Article 34).

The period during which this right of option may be exercised is the same as the above; consequently it terminated on August 6, 1926. Article 2 of the Pales-

¹ The expression 'Government exercising authority' refers to the mandatory Power, and it may be of interest to mention that during the Lausanne negotiations the Turkish delegation proposed to substitute for

it the formula 'the Government of the detached country' (Records and Proceedings of the Lausanne Conference, 1922-23, Minutes of the 2nd Commission, *Cmd.* 1814 (1923), p. 527).

tine Citizenship Order gives effect to this provision, with the difference, however, that the prospective optant need not, in order to be able to exercise his right of option, belong by race to the majority of the population of the territory of which he is a native. It has indeed been pointed out that

‘the restriction in the treaty was not well founded in principle, for there seems no reason why a Palestinian-born Jew resident in America should not have the same right as a Palestinian-born Arab to doff his imported Ottoman nationality and adopt that of his *Patria*.’¹

On the other hand, a restrictive interpretation has been given in the Order to the term ‘native’ in Article 34 of the treaty, in that it has been replaced by ‘born,’ thus limiting the above right of option to Turkish nationals who were born in Palestine. Whether this was meant by the authors of the treaty may be open to question, the more so as the term ‘*originnaire*’ of the authoritative version in French, while it *may* mean ‘born,’ does not necessarily and exclusively mean it. It has also to be taken into consideration that the term ‘native’ has acquired a somewhat special meaning when used in connection with territories under mandates. In support of this contention it may be mentioned that the final report of the third sub-commission on Nationalities and Antiquities to the second Commission (*Régime* of Foreigners in Turkey) of the Lausanne Conference, when dealing with Article 34 of the treaty (Article 32 of the draft terms of peace), speaks of ‘the juridical status of persons *belonging* to territories detached from Turkey.’² Moreover, Article 34 seems to be the counterpart of Article 30; while the latter deals with the case of Turkish nationals habitually resident in territory de-

¹ N. Bentwich, *op. cit.*, in *B. Y.* (1926), p. 103.

² *Cmd.* 1814 (1923), p. 533.

tached from Turkey, the former is concerned with those who habitually reside abroad but belong to such territory, where they have previously acquired Turkish nationality by birth or otherwise. It is hard to see why the factor of birth should be brought in by the Citizenship Order in the case of Article 34 when it is certainly excluded from that of Article 30, which makes no distinction between Turkish nationals whether born within Turkey or without. It is equally difficult to see why, if a person belonging to the category in question should come to Palestine, he should not be able to acquire Palestinian citizenship unless he satisfied the authority before whom a declaration is to be made that he had resided in the country 'for not less than six months immediately prior to the date of making such declaration' (Article 4, clause 1 (b) of the Citizenship Order). This may have the curious and no doubt unexpected effect of inducing such persons who happen to be in Palestine to leave the country in order to acquire its citizenship without any conditions of residence, under the provision of Article 34 of the Treaty of Lausanne. Such explanations as have been given of this obvious paradox seem to be inadequate.

The above treaty provisions, as given effect in the Palestine Citizenship Order, are concerned with the acquisition of Palestinian citizenship only as a consequence of the detachment of Palestine from Turkey. In regard to the acquisition of that citizenship by birth, the above Order is largely inspired by the nationality law of the Mandatory. While, however, according to the British Nationality and Status of Aliens Act, 1914, which consolidated and amended the previous enactments relating to nationality, both the *jus sanguinis* and the *jus soli* govern the acquisition of British nationality, only the former is admitted in the Palestine Citizenship Order, the latter being applied merely in the rather

exceptional case of persons who otherwise would have been stateless. Article 3 of the Order provides that the following persons are deemed to be Palestinian citizens :

‘(a) Any person born in lawful matrimony within Palestine whose father at the time of such person’s birth was a Palestinian citizen.’

‘(b) Any person born in lawful matrimony out of Palestine whose father was a Palestinian citizen at the time of that person’s birth and was either born within Palestine or had obtained a certificate of naturalization or who had acquired Palestinian citizenship under Article 1 or Article 5 of this Order.’¹

‘(c) Any person born whether in or out of lawful matrimony within Palestine who does not by his birth or by subsequent legitimation acquire the nationality of any other State or whose nationality is unknown.’

The principle underlying the limitation of the *jus sanguinis* to the second generation in the case of persons born out of Palestine is borrowed from the British Nationality Act of 1914, which, however, had been amended in the meantime. It is obvious that conflicts may arise between the British and Palestinian nationality laws : thus a person born in Great Britain of a Palestinian citizen himself born in Palestine is a British subject according to British law and a Palestinian citizen according to Palestinian law ; such conflicts seem to resemble those which ordinarily arise between laws enacted by legislatures wholly distinct from each other. In this case, however, there is an added difficulty, of a constitutional character, as the British nationality law is embodied in Acts of Parliament while the Palestinian law was enacted in the form of an Order in Council.

As to the acquisition of Palestinian citizenship by

¹ Art. 1 of the Order has been dealt with above, while Art. 5 provides for the acquisition of Palestinian citizenship by holders of pro-

visional certificates issued in 1922 in connection with the elections to the Legislative Council.

naturalization (Part III of the Order), it has already been dealt with in connection with Article 7 of the mandate.

Diplomatic Protection of Palestinian Citizens Abroad.—In the case of the territories under B and C mandates, a special provision for the diplomatic protection of their inhabitants has been inserted in the peace treaty with Germany (Article 127 of the Treaty of Versailles), but no such provision is to be found in the peace treaty with Turkey concerning the territories detached from the Ottoman Empire and placed under A mandates. This is why, as it seems, the latter mandates contain a clause to this effect while the former do not. After having entrusted the Mandatory, as we have seen, with the control of the foreign relations of Palestine, Article 12 of the mandate provides that 'he shall also be entitled to afford diplomatic and consular protection to citizens of Palestine when outside its territorial limits.' The word 'entitled,' if taken literally, seems somewhat peculiar, as there can be no doubt that the diplomatic protection of the inhabitants of Palestine—like that of the inhabitants of all other territories under mandate—does not constitute a right for the Mandatory but an obligation assumed towards the inhabitants. If the test of renunciation be applied and the question be asked whether the Mandatory could renounce such protection, it is hardly possible to imagine that either the competent authorities of the League of Nations or the Mandatories themselves would give any other than a negative answer. Diplomatic protection forms an integral part of the foreign relations the control of which has been entrusted to the Mandatory, and he can renounce the former no more than the latter. It may also be said that in virtue of the above-mentioned provision of Article 127 of the Treaty of Versailles it is 'the native inhabitants of the former German oversea possessions' who are 'entitled to the diplomatic protection of the Governments exer-

cising authority over those territories'; and there seems to be no reason why in this respect there should be any difference in principle between the above possessions and the territories detached from Turkey, unless it was intended in Article 12 of the mandate to emphasize the fact that it was 'the Mandatory' as distinct from 'the Administration of Palestine'—whatever its composition under the mandate may subsequently be—who was entrusted with the diplomatic protection of Palestinian citizens. Such protection involves what is known as the right of active legation, which, like that of passive legation,¹ can in virtue of the mandate be exercised only by the Mandatory himself.

Diplomatic protection is to be afforded in the terms of Article 12 'to citizens of Palestine when outside its territorial limits.' The enactment of a nationality law for Palestine was a preliminary condition of the exercise of such protection, not only from the point of view of the Mandatory but also from that of the States in which Palestinian citizens happened to be or to reside. Instances of hardship to prospective Palestinians abroad are known to have occurred owing to the delay in the enactment of the Palestine Citizenship Order, which was largely due to the protracted peace negotiations with Turkey. It is, however, to be pointed out that the previous situation is likely to continue for those who left Palestine some time before the issue of the above Order, since many, if not all, of them are not admitted to Palestinian citizenship as a result of the interpretation given in this Order to Article 30 of the Treaty of Lausanne. Being stateless, they are, indeed, without any diplomatic protection.

In a somewhat similar position appear to be such citizens of Palestine as are resident in territory of the

¹ This is referred to in Art. 12 of the mandate as 'the right to issue exequaturs to consuls appointed by foreign Powers,' as consuls accredited

to the Government of Palestine seem equally to be diplomatic representatives of their respective States.

Mandatory. No person is recognized as possessing a right to enter and reside in foreign countries ; he is there on sufferance, and that is mainly why diplomatic protection is at all necessary. Not being nationals of the Mandatory, citizens of mandated areas are considered as foreigners when in his territory, and as such are subject to all laws and regulations concerning foreigners. On the other hand, having only the diplomatic representatives of the Mandatory in other countries to rely upon for such protection as foreigners may need, they seem to be deprived of it, when in the Mandatory's dominions, in the absence of such representatives or of any authority which would be substituted for them. Such suggestions as, for instance, to entrust the League of Nations or a friendly Power with this task may safely be considered as impracticable, taking into account the susceptibilities of the Mandatory and the possibility of friction due to interference from outside. A possible solution may be found in entrusting a special authority, either within the mandatory Government or appointed for the purpose by the Administration of the mandated territory concerned, with the protection of their respective nationals when in the Mandatory's country. Another possibility is that of securing for nationals of mandated territory the same treatment as for those of the Mandatory by means of a special convention between the latter and the Administration of such territory.¹ Such a suggestion could have been adopted, as it seems, with comparative ease had mandated territories been in a position to grant reciprocity to the nationals of the Mandatory. But in virtue of the principle of equality of treatment this would involve, as we shall see, the recognition of a similar treatment to nationals of all States Members of the League.

¹ Precedents for conventions between the Mandatory and the local Administration of a mandated territory exist already, as we shall see below.

The question, although common to nationals of all territories under mandate, is likely to become within a comparatively short time a practical issue mainly with regard to nationals of territories under A mandates. As far as Palestine is concerned, the number of its citizens coming to Great Britain for various reasons such as study, trade, etc., is continuously increasing, so that an early opportunity will probably be given for the consideration of the best means to afford them such diplomatic and consular protection as they may need.

In conclusion a few words may be said as to the scope and extent of the diplomatic protection which the Mandatory is under obligation to afford to citizens of the territory under his mandate. In principle, the protection is to be equal to that enjoyed by his own nationals, the only exception being in cases where the latter, as such, enjoy preferential treatment in virtue of either reciprocity agreements between the Mandatory and other States or extraterritorial privileges such as capitulations. Thus, while a British subject enjoys the privileges of the *régime* of capitulations in Egypt, such privileges will not be accorded to Palestinian citizens,¹ either from the point of view of diplomatic protection or from any other, except by special provision to this effect. We are going to see, indeed, that treaties or conventions entered into by Powers to which mandates have been entrusted do not apply *ipso facto* to mandated territories or their citizens.

(2) APPLICATION OF TREATIES AND CONVENTIONS TO PALESTINE

The principle governing the application of the Mandatory's treaties and conventions to territory under his

¹ See F. M. Goadby, *The Present Situation with regard to the Privileges of Foreigners in the Near East*, in *J.C.L.*, vol. vi. part iv. (Nov. 1924),

pp. 265-266; and note on *Syrians and Palestinians in Egypt*, in *J.C.L.*, vol. viii. part i. (Feb. 1926), p. 145.

mandate is one of the most important consequences of the distinct character of the international status of such territory. As early as 1923 it was stated in the report of the Permanent Mandates Commission on the work of its third session that

‘the special international conventions entered into by a State do not apply *de jure* to territories in regard to which the State in question has been entrusted with a mandate, even when these conventions are applicable to contiguous territories placed under the sovereignty of the same State.’¹

The reference to these territories illustrates the difference which exists, from the point of view of the above principle, between colonial possessions on the one hand and mandated territories on the other. A colony is bound *ipso facto* by treaties to which its Mother State is a party, unless otherwise provided for; a mandated territory, however, is bound only by those treaties in which the Mandatory acts in his capacity as such, namely, which are concluded by the Mandatory on behalf of the territory or which contain a special provision extending the treaty in question to the territory. In other words, while a special provision is necessary in order to *exclude* a colony or even a dominion² from the scope of a given treaty signed by the ‘mother country,’ such a provision is required for the purpose of *including* a mandated territory in treaties signed by the Power in trust of a mandate.³

¹ *P.M.C.*, Annexes to Minutes of 3rd Session, pp. 309-310.

² The dominions being integral parts of the British Empire, this seems still to hold good in principle, although, as a result of the last Imperial Conference, a departure from previous practice may take place in this respect.

³ A resolution to the contrary was, however, adopted by the last

Imperial Conference, presumably at the instance of an interested dominion; it runs as follows: ‘The signature of a treaty on behalf of a part of the Empire should cover territories for which a mandate has been given to that part of the Empire, unless the contrary is stated at the time of the signature’ (Report of Inter-Imperial Relations Committee, Imperial Conference, 1926,

Commercial and Other Treaties.—One of the results of the above principle is that mandated territories have been refused the benefits of such treaties as have been concluded by the Mandatories either before the coming into force of the respective mandates or subsequently, but containing no special provision extending their application to the territories in question. In certain cases this has led to a situation in which mandated territories found themselves at an economic and commercial disadvantage as compared with the territories under the sovereignty of the mandatory Power—a situation which the authors of the mandates system can hardly have intended to arise and for which the Permanent Mandates Commission has considered it to be its duty to find an adequate solution. The recommendations made by the Commission at its third session¹ concerned mainly the territories under B mandates, where the above disadvantages were more striking owing to the contiguity of colonial possessions. At its sixth session, however, the whole question was dealt with, and it was suggested by the Commission that the Council might

‘(1) Recommend that the mandatory Powers, and also all States, whether Members or not of the League of Nations, which have concluded special treaties or conventions with the mandatory Powers should agree to extend the benefits of such treaties or conventions to mandated territories if possible and expedient and if the provisions of these international agreements are consistent with the stipulations of the Covenant and the mandate ;

Summary of Proceedings, *Cmd.* 2768 (1926), p. 24). It remains to be seen whether third States will take cognizance of this resolution and consider it as an adequate substitute for an express provision to be inserted in such treaties as they may from time to time negotiate with the

various parts of the British Empire. Moreover, as far as Palestine at least is concerned, the resolution is likely to have little or no effect on the nature of its international status.

¹ *P.M.C.*, Annexes to Minutes of 3rd Session, p. 310.

(2) Request the mandatory Powers, subject to the above reservations, to insert in any special treaties or conventions they may conclude hereafter a clause providing for their application to mandated territories.' ¹

Such recommendations appeared to be necessary since no general provision to this effect is to be found in the various mandates, although in many cases the Mandatories themselves have previously secured the consent of the States with which special treaties (mainly commercial) have been concluded to the extension of such treaties to their mandated territories. Thus Palestine now enjoys the benefits of Great Britain's commercial treaties with Lithuania,² Latvia,³ Poland,⁴ Finland,⁵ Austria,⁶ Germany⁷ and Greece.⁸ Treaties concluded with France,⁹ Belgium¹⁰ and Czechoslovakia¹¹ regarding legal proceedings in civil and commercial matters (transmission of judicial and extra-judicial documents, *commissions rogatoires*, etc.) have also been acceded to by the Mandatory on behalf of Palestine.

Besides such treaties, namely those originally concluded between the Mandatory and other States and subsequently extended to Palestine, there is another category of treaties, to which Palestine is an original party, the signature being apposed by the High Commissioner representing the Government of Palestine and not by a representative *ad hoc* of the Mandatory. Although this may appear as a mere matter of expediency, it is probably not without connection with the general principles governing the international status of

¹ *P.M.C.*, Minutes of 6th Session, p. 172.

² *O.G.*, No. 104, Dec. 1, 1923.

³ *Ibid.*, No. 124, Oct. 1, 1924.

⁴ *Ibid.*, No. 132, Feb. 1, 1925.

⁵ *Ibid.*, No. 162, May 1, 1926.

⁶ *Ibid.*, No. 173, Oct. 16, 1926.

⁷ *Ibid.*, No. 182, March 1, 1927.

⁸ *Ibid.*, No. 188, June 1, 1927.

⁹ *Ibid.*, No. 125, Oct. 15, 1924.

It was stipulated in the treaty that it should not affect, until further notice, existing arrangements between Palestine and Syria.

¹⁰ The exchange of Notes between Great Britain and Belgium was registered with the Secretariat of the League of Nations (*T.S.* (L. of N.), vol. xxxv. (1925), pp. 310-315).

¹¹ *O.G.*, No. 192, Aug. 1, 1927.

Palestine. The following agreements may be mentioned as belonging to the above category :

1. Agreement between the Post Office of the United Kingdom of Great Britain and Ireland and the Post Office of Palestine for the exchange of money orders (January 1922). It may be of interest to note that this agreement was registered with the Secretariat of the League of Nations.¹
2. Agreement between the Governments of Palestine and Syria in respect of customs regulations on foreign goods in transit to Syria *via* Palestine and to Palestine *via* Syria, brought into force on October 1, 1921.² This agreement, as we shall see, was concluded under the special provision embodied in the then draft Article 18 of the mandate.
3. *Bon voisinage* agreement in connection with the delimitation of the Syro-Palestinian frontier,³ replaced by a new agreement of February 2, 1926.⁴
4. Agreement between Palestine and Syria under the Road Transport (Amendment) Ordinance, 1924.⁵
5. Provisional extradition agreement between Palestine and Syria signed in July 1921,⁶ and subsequent Addendum.⁷
6. Provisional extradition agreement between Palestine and Egypt which came into force on October 1, 1922.⁸

Extradition Treaties.—The last two are at present the only extradition agreements to which Palestine is an original party.⁹ In addition, special arrangements—which, however, do not amount to a formal treaty—

¹ *T.S.* (L. of N.), vol. xiii. (1922), pp. 10-24.

² *O.G.*, No. 52, Oct. 1, 1921.

³ *Ibid.*, No. 115, May 15, 1925.

⁴ *Ibid.*, No. 161, April 16, 1926.

⁵ *Ibid.*, No. 150, Sept. 1, 1925.

⁶ *Ibid.*, No. 48, Aug. 1, 1921.

⁷ *Ibid.*, No. 112, April 1, 1924.

⁸ *Ibid.*, No. 78, Nov. 1, 1922.

⁹ They are similar in terms except that in the latter extradition is granted by the Government of Palestine only of such offenders as are justiciable of the Egyptian Courts, thus excluding those who in virtue of the *régime* of capitulations in Egypt are subject to the jurisdiction of the Consular Courts.

have been entered into between the Governments of Palestine proper and Transjordan for reciprocal extradition of offenders. In view of the general state of unrest which prevailed after the war in the territories formerly belonging to the Ottoman Empire, it was indeed of primary importance to Palestine that extradition treaties should first be concluded with the adjacent countries. As far as such treaties in general are concerned, it has been provided in Article 10 of the mandate that, 'pending the making of special extradition agreements relating to Palestine, the extradition treaties in force between the Mandatory and other foreign Powers shall apply to Palestine.' A number of such treaties have accordingly been extended to Palestine, and it has been provided in the Extradition Ordinance, 1924, that

'where by any agreement now in force or hereafter made between His Britannic Majesty and any foreign State provision is made for the extradition of fugitive offenders from the United Kingdom to the territory of such foreign State, such agreement shall be deemed to apply to any demand for extradition from Palestine of fugitive offenders accused or convicted in such foreign State of any extradition offence to the extent that it applies to demands for extradition from the United Kingdom' (Article 4).¹

The Ordinance closely follows the Extradition Act of 1870, and the procedure it has established is wholly new to Palestine, owing to the fact that under the *régime* of capitulations extradition in the Ottoman Empire was not a function of the State.²

The above Article 10 of the mandate and the Extradition Ordinance, 1924, were cited in a case of extradition from Palestine to Italy which came before the local

¹ O.G., No. 115, May 15, 1924.

² N. Bentwich, *The Legislation of*

Palestine (1918-1925), in *J.C.L.*, vol. viii. part i. (Feb. 1926), p. 17.

Courts and subsequently before the Judicial Committee of the Privy Council.¹ The latter granted special leave to appeal from the decision of the High Court of Palestine dismissing the application of the petitioners for a writ of *habeas corpus* in proceedings taken to extradite them to Italy on the ground of their alleged complicity in a fraudulent bankruptcy committed in that country. The petitioners (Goralschwili and Sabatai) were in possession of Palestinian citizenship certificates,² and it was contended on their behalf that they were not liable to extradition under the Anglo-Italian Treaty of 1873 (extended to Palestine in pursuance of Article 10 of the mandate), which excludes from its scope nationals of the contracting parties (Article 3 of the treaty). There could be little doubt that the petitioners were not British subjects, since, as we have seen, the status of the inhabitants of mandated territories was to be distinct from that of the nationals of the Mandatory. But the question arose whether the extension of the above treaty to Palestine did not mean that the rights accorded in the treaty to 'subjects of the United Kingdom' should be conferred upon citizens of Palestine, and that consequently the treaty should apply to Palestine not literally but *mutatis mutandis*. When a treaty between the Mandatory and a foreign Power is extended to a territory under the mandate of the former, such extension seems to imply that the territory in question and its citizens are to be substituted, in the relations with the foreign Power, for the Mandatory's territory and his nationals. Otherwise Article 10 of the mandate would have the curious and unexpected result of exempting British subjects residing in Palestine from extradition,

¹ Goralschwili and another v. The Attorney General of Palestine, Law Report, Feb. 24, 1925 (*The Times*, Feb. 25, 1925).

² This was before the enactment

of the Palestine Citizenship Order, 1925, and provisional certificates of citizenship were issued, as we have seen, in 1922, in connection with the elections to the Legislative Council.

whenever such exemption is provided for, while making citizens of Palestine liable to it. Such interpretation would seem to be inconsistent not only with the Mandatory's trust as a whole, but also with the special provisions of the mandate stipulating that no preferential treatment, in whatever respect, be granted to nationals of the Mandatory as compared with those of other States Members of the League. It may equally be mentioned that Article 10 of the mandate provides for the application to Palestine of 'the extradition treaties in force between the Mandatory and *other*¹ foreign Powers' (thus suggesting that for purposes of extradition the Mandatory himself is a foreign Power in Palestine), and that such application is only of a temporary character 'pending the making of special extradition agreements relating to Palestine' which, when concluded, will hardly be able to grant any special privileges to the nationals of the Mandatory without infringement of the principles of the mandate. On the other hand, the Extradition Ordinance, 1924, provided, as we have seen, that any extradition treaty extended to Palestine should apply 'to the extent that it applies to demands for extradition from the United Kingdom,' and this has been construed by the High Court of Palestine as meaning that 'in applying the Anglo-Italian Treaty to Palestine, Article 3 of the treaty is to be taken to exempt from extradition only British subjects.'² It may, however, be pointed out that the extension of the above treaty to Palestine did not simply mean the incorporation of the territory of Palestine in the United Kingdom for the purposes of the treaty, but equally

¹ The italics are the author's.

² Quoted by Q. Wright, *op. cit.*, in *A.J.*, vol. xx. (1926), p. 771. The writer takes exception to this part of the opinion of the High Court, which 'would seem to withhold from

the inhabitants of mandated territories the benefits of trade, civil rights or other treaties of the Mandatory which might be extended to mandated territory' (*ibid.*, p. 772).

the assimilation of the citizens of Palestine to those of the United Kingdom.

The logical conclusion would be that whenever a treaty exempts British subjects from extradition, such exemption is to be accorded, on the extension of the treaty to Palestine, to Palestinian citizens. Such would seem to be the case not only with regard to extradition treaties but also with regard to all treaties that may from time to time be extended to Palestine or to any other mandated territory. Otherwise, as has been pointed out, 'the object aimed at by the Mandates Commission in urging extension of such treaties to mandated territory would be defeated.'¹ Owing to the fact, however, that the above-mentioned criminal proceedings were discontinued in Italy, no decision was given by the Judicial Committee in the Goralschwili case; had this been done, it would undoubtedly have had a great bearing upon the whole matter of application of treaties to mandated territories. In the absence of such legal decision the Permanent Mandates Commission may be seized of the question when opportunity arises, and there can be but little doubt as to what its opinion would be.

In the meantime the Extradition Ordinance, 1924, was repealed, and another provision was substituted for the one quoted above. It is now provided² that 'where an arrangement is in force between His Majesty and a foreign State for the surrender of fugitive criminals from the United Kingdom to that State, the High Commissioner may apply this Ordinance in the case of that foreign State as though it was an arrangement between His Majesty and that foreign State for the surrender of fugitive criminals to that State from Palestine' (Article 5, clause (1), paragraph 2).³ The provisions of the new

¹ *Ibid.*

² Extradition Ordinance, 1926, O.G., No. 174, Nov. 1, 1926.

³ A Proclamation issued under this

provision extended to Palestine the extradition arrangement between Great Britain and Czechoslovakia (O.G., No. 182, March 1, 1927).

Ordinance can be made to apply by Proclamation of the High Commissioner to existing arrangements between the Mandatory and any foreign State 'with respect to the extradition from Palestine of fugitive criminals to the territory of such State' (*ibid.*, paragraph 1), and the High Commissioner is further empowered, in virtue of Article 5, clause (2), to limit the application of the Ordinance, or 'render the operation thereof subject to such conditions, exceptions and qualifications as may be deemed expedient.' The words which were mainly responsible for the decision of the High Court in the Goralschwili case have been omitted from the Extradition Ordinance, 1926, and, although it is not quite clear whether—and if so, to what extent—it was intended that the new measure should alter the law as stated by the High Court, it may at least be assumed that the Palestine Courts will no longer consider themselves bound by the above decision should they be faced with a new requisition to extradite a Palestinian citizen from Palestine.¹

General International Conventions.—With regard to general international conventions, it is provided in Article 19 of the mandate that

'the Mandatory shall adhere on behalf of the Administration of Palestine to any general international conventions already existing, or which may be concluded hereafter with the approval of the League of Nations,² respecting the slave traffic, the traffic in arms and

¹ In this connection it may be of interest to mention that the Notice extending to Palestine the Extradition Convention between the United Kingdom and Estonia contains the following passage: 'The provisions in the convention which apply to British subjects shall be deemed to apply to persons who are Palestinian citizens or acquire citizenship under the Palestine Citizenship Order in Council, 1925' (*O.G.*, No. 187,

May 16, 1927).

² Should there be any doubt, it may be pointed out that the words 'with the approval of the League of Nations' refer to 'concluded' and not to 'adhere.' The adhesion of the Mandatory to such conventions on behalf of Palestine is only subject to the general supervision of the League, and no special approval in each particular case has ever been considered necessary.

ammunition, or the traffic in drugs, or relating to commercial equality, freedom of transit and navigation, aerial navigation and postal, telegraphic and wireless communication or literary, artistic or industrial property.'

The following Article stipulates that

' the Mandatory shall co-operate on behalf of the Administration of Palestine, so far as religious, social and other conditions may permit, in the execution of any common policy adopted by the League of Nations for preventing and combating disease, including diseases of plants and animals ' (Article 20).

This provision refers to certain international agreements mainly concluded with the assistance of the Health section of the League of Nations, and is directly connected with the previous Article in so far as the co-operation of Palestine in the above common policy implies the adhesion of that territory to such agreements.

The following international conventions may be quoted as having been adhered to by the Mandatory on behalf of Palestine, in virtue of the above Articles :

1. The International Copyright Convention, 1908.
2. The Universal Postal Convention and Subsidiary Agreement, 1920.
3. The International Transit and Waterways Convention, 1921.
4. The Convention and Statute of the International *Régime* of Railways.
5. The International Opium Convention, 1924.
6. The International Convention relating to the Simplification of Customs Formalities, 1924.
7. The International White Phosphorus Convention, 1925.

From this enumeration it may be seen that some of the most important conventions referred to in Article 13 of the mandate are still to be adhered to. Since the mandated territory may greatly benefit from such

accession, as well as from the execution of the common policy of the League, mentioned in Article 20, it is the duty of the Mandatory towards the inhabitants to avoid any unnecessary delay in the carrying into effect of the above provisions. Some conventions, such as those relating to traffic in arms and ammunition or to the traffic in drugs, are of importance to Palestine ; on the other hand, conventions regarding slave traffic do not directly concern Palestine, since, except for some not quite ascertained form of slavery in Transjordan, it is wholly immune from any such traffic.¹ This is, however, a matter in which the League as a whole is greatly interested, and which has specifically been dealt with in Article XXII of the Covenant and the various mandates of the B and C categories.

II. OBLIGATIONS OF THE MANDATORY TOWARDS THE LEAGUE OF NATIONS AND ITS MEMBERS

Under this heading may be classified such obligations as have been assumed by the Mandatory, either towards the League of Nations itself or towards the individual States Members of the League, in virtue of various provisions of the mandate for Palestine. Following the order in which these provisions are inserted in the mandate, the obligations in question may be subdivided into

1. Obligations relating to the Holy Places, for which, as we shall see, the Mandatory is 'responsible solely to the League of Nations' (Articles 13, 14 and 28).
2. Obligations connected with the principle of equality of treatment secured in the mandate to the individual Members of the League in matters of commerce, taxation, etc. (Article 18) and antiquities (Article 21).

¹ See Note on Slavery in Palestine and Transjordan, *Colonial*, No. 17 (1925), pp. 27-28.

3. Obligations resulting from the principle of the supervision of the mandate by the League of Nations (Articles 24, 26 and 27).

1. OBLIGATIONS RELATING TO THE HOLY PLACES

The question of the Holy Places, like that of the Jewish national home, is peculiar to the mandate for Palestine. It has proved to be the most difficult for the Council of the League to solve, and is the only one that still remains in suspense, nearly five years after the ratification of the mandate.

The main reasons for the difficulty may be found in the history of the question under the Turkish *régime*, and in the fact that political and not merely religious motives seem to have inspired the attitude adopted by the interested Powers. Some aspects of this question, as pointed out in the Report of the High Commissioner for 1920-25, have been 'a factor in diplomacy and sometimes a contributory cause of enmity and of war.'¹ With the introduction, however, of the mandatory *régime* and the consequent substitution of international co-operation through the League of Nations for the rival claims and interests of individual States, this danger seems to have been finally averted, although such questions as have been left for the Council to solve may still cause difficulty and delay. The application of the mandates system to Palestine could hardly have been allowed to affect such rights as had been acquired prior to the mandate and which remained outside its main object and scope.² No difficulty seems, therefore, to have existed

¹ *Colonial*, No. 15 (1925), p. 48.

² As pointed out by Lord Balfour in the course of the discussion, the question of the Holy Places 'was of interest mainly to people outside Palestine, and, in so far as the mandate was concerned, might be

regarded as of secondary importance,' since, as he goes on to explain, 'the system of mandates had been conceived in the interests of the populations living in the mandated territories' (*O.J.*, Aug. 1922 (Part II.), p. 820).

with regard to the principle itself as embodied in Article 13 of the mandate, which was adopted by the Council of the League practically without discussion. It is on the method of giving effect to and of safeguarding the principle that agreement could not be reached, as may be seen from the fact that three different drafts were made of Article 14 of the mandate, providing for the constitution of a special Commission for the Holy Places, and that the question has ultimately been left for further negotiation.

Preservation of Existing Rights.—Article 13 lays down the main principle affecting the Holy Places in the following terms :

‘ All responsibility in connection with the Holy Places and religious buildings or sites in Palestine, including that of preserving existing rights and of securing free access to the Holy Places, religious buildings and sites and the free exercise of worship, while ensuring the requirements of public order and decorum, is assumed by the Mandatory, who shall be responsible solely to the League of Nations in all matters connected herewith, provided that nothing in this Article shall prevent the Mandatory from entering into such arrangements as he may deem reasonable with the Administration¹ for the purpose of carrying the provisions of this Article into effect ; and provided also that nothing in this mandate shall be construed as conferring upon the Mandatory authority to interfere with the fabric or the management of purely Moslem sacred shrines, the immunities of which are guaranteed.’²

¹ ‘ Administration of Palestine ’ is generally used in the mandate, except when this expression has already been mentioned in a previous sentence or paragraph of the same Article. Although Art. 13 provides the only exception, it can hardly be said that what was referred to in the above provision was not the Administration of Palestine but some contemplated

Administration of the Holy Places. The omission, however, cannot be explained any more than the nature and scope of the ‘ arrangements ’ mentioned in the Article.

² This last clause constitutes an important reservation to the authority of the Mandatory. It is in pursuance of the draft—as it then was—of this provision as well as of

Thus the maintenance of the *status quo*, i.e. the preservation of existing rights of the various religious communities of the world, is the main duty assumed by the Mandatory with regard to the Holy Places. This is, however, made subject to 'ensuring the requirements of public order and decorum,' just as under Article 15 of the mandate 'complete freedom of conscience and the free exercise of all forms of worship' is made subject to the 'maintenance of public order and morals.' This, as we have seen, constitutes one of the main obligations of the Mandatory towards the inhabitants of the territory, and seems to indicate that the rights of these inhabitants are to be considered first. This is, indeed, a fundamental principle of the mandates system as a whole, which has been emphasized on various occasions, chiefly by the Permanent Mandates Commission.

It was maintained by the French representative on the Council of the League, during the discussion which preceded the ratification of the mandate for Palestine, that

'Article 13 of the mandate asserted the principle of the sovereignty of the mandatory Power, which was entrusted with maintaining order and public well-being and assuming entire responsibility for the Holy Places.'¹

This opinion was shared by the British representative, Lord Balfour,² although there seems to be nothing in the letter of the above Article to justify such a construction, which affects the very foundation of the mandates system. What must have been meant is that—subject, of course,

that embodied in Art. 9, para. 2 *in fine*, that a Supreme Moslem Sharia Council was set up by Order and Regulation of the High Commissioner as a permanent body of five members, to be elected by the Moslem community of Palestine (*O.G.*, No. 58, Jan. 1, 1922). The Council is entrusted with 'the care of religious

buildings and charitable endowments and the supervision of the religious Courts of Law' (*Colonial*, No. 15 (1925), p. 52; see also *Colonial*, No. 17 (1925), pp. 25-27).

¹ *O.J.*, Aug. 1922 (Part II.), p. 819.

² *Ibid.*, p. 820.

to the supervision of the League—supreme authority is vested in the Mandatory with regard to the Holy Places. Indeed, the opinion of the French and British representatives may be better understood when read together with the discussion that took place in the Council of the League concerning Article 14 of the mandate (dealing, as we shall see, with the Commission of the Holy Places), and in conjunction with the remark made by Lord Balfour to the effect that ‘it was in any case desirable to avoid the appointment of a permanent Commission which would involve creating a kind of executive power by the side of the mandatory Power, which must be sovereign.’¹

In connection with the question of sovereignty which has been raised on this occasion, it may be asked whether the ‘free access to the Holy Places,’ involving as it does a right of passage for pilgrims and adherents of religious denominations, constitutes a kind of international servitude against the now mandated territory and the future State of Palestine. Indeed, Article 28 of the mandate provides that

‘in the event of the termination of the mandate hereby conferred upon the Mandatory, the Council of the League of Nations shall make such arrangements as may be deemed necessary for safeguarding in perpetuity, under guarantee of the League, the rights secured by Articles 13 and 14.’

Does this provision imply that some kind of international servitude for religious purposes has been established by the mandate, not only for the period of its duration but in perpetuity? Since it is universally recognized that international or State servitudes exist between States only, the answer seems to be in the negative, as the above right of free access has not been accorded to

¹ *O.J.*, Aug. 1922 (Part II.), p. 820.

certain States, or even to the collectivity of nationals of such States, in their capacity as such, but to individuals or groups of individuals belonging to various religious denominations. 'Whatever rights may be granted by a State to foreign individuals and corporations,' says Oppenheim, 'such rights can never constitute State servitudes.'¹ An instance illustrating the difference between a State servitude involving right of passage and the recognition of a similar right to individuals or corporations may be found in the comparison of Article 17, paragraph 3 of the mandate² and Article 13, with which we are concerned here.

The Holy Places Commission (Article 14 and its various drafts).—The determination of the rights secured in Article 13 of the mandate is left to a special international body provided for in the following terms :

'A special Commission shall be appointed by the Mandatory to study, define and determine the rights and claims in connection with the Holy Places and the rights and claims relating to the different religious communities in Palestine. The method of nomination, the composition and the functions of this Commission shall be submitted to the Council of the League for its approval, and the Commission shall not be appointed or enter upon its functions without the approval of the Council' (Article 14).

Unlike all the other Articles of the mandate which have been drafted by the Mandatory and subsequently approved—sometimes with slight modifications—by the Council of the League, Article 14, as quoted above, has been wholly drafted by the latter. As may be seen from its terms, it merely recognizes the principle of the constitution of a Commission for the Holy Places, reserving the composition and functions of the Commission for further

¹ *Op. cit.*, vol. i. p. 366.

² See *supra*, Territorial Integrity, Defence and Public Order, p. 216.

negotiations between the interested parties. The solution of these questions was attempted by the Mandatory in the two successive drafts of Article 14 which he prepared, and during their consideration by the Council of the League it became quite clear that the failure of the Mandatory's attempts was wholly due to antagonism between the interests of the various parties concerned. The British representative, indeed, pointed out that his Government 'was in an entirely impartial and independent position,'¹ and the first draft of Article 14 prepared by the Mandatory was in its main part merely a literal transcription of the provisions embodied in the Treaty of Sèvres when it was still thought that the latter would remain in force. It ran as follows :

'In accordance with Article 95 of the treaty of peace with Turkey, the Mandatory undertakes to appoint as soon as possible a special Commission to study and regulate all questions and claims relating to the different religious communities. In the composition of the Commission the religious interests concerned will be taken into account. The Chairman of the Commission will be appointed by the Council of the League of Nations.'

The draft further provided that

'it will be the duty of this Commission to ensure that certain Holy Places, religious buildings or sites regarded with special veneration by the adherents of one particular religion, are entrusted to the permanent control of suitable bodies representing the adherents of the religion concerned.'²

The selection of the Holy Places, etc., was also to be entrusted to the Commission, subject to the approval of the Mandatory. The second and third paragraphs of the draft respectively provided for 'the right and

¹ *O.J.*, Aug. 1922 (Part II.), p. 819.

² *Cmd.* 1500 (1921), p. 10.

duty of the Mandatory to maintain order and decorum ' and for the guarantee of the League.

The draft, however, did not meet with the approval of the interested religious bodies, and mainly of the Catholic Church. Cardinal Gasparri's letter of May 15, 1922, addressed to the Secretary General of the League, took exception—among other things—to the above draft of Article 14, and ' in order to remove all possible ground for apprehension ' an alternative draft was prepared by the British Government and communicated to the League together with a Note in reply to the above letter. The following extract from this Note may be considered as indicating the Mandatory's attitude towards this question :

' His Majesty's Government are anxious to ensure that no religious community shall feel any apprehensions as to the position of its adherents in Palestine under the British mandate. They are conscious that Palestine is the centre of a variety of religious interests, each one of which, considered separately, is world wide. As a Christian Power they are fully alive to the paramount necessity of ensuring to all Christian communities the consciousness that nothing will be done in Palestine which might be construed as negligence of or indifference to Christian sentiment.' ¹

In the second draft of Article 14 ² various alterations were made regarding both the composition and the functions of the proposed Commission. It was to consist of not less than seven members, to be appointed by the Mandatory subject to the approval of the Council of the League. This was intended to guarantee the impartiality of the Commission, and as a further means towards this end it was stated in the above Note that

' His Majesty's Government would be prepared, if the Council of the League approved this course, to select

¹ *Cmd.* 1708 (1922), pp. 5-6.

² *Ibid.*, pp. 7-8.

nominees for the Commission from a panel put forward in the first place under some international procedure, whether by the Assembly or Council of the League of Nations, or by the President of the Court of International Justice, while reserving to themselves the right to submit additional names for stated reasons to the Council of the League for approval.’¹

Moreover, the draft provided that ‘each member of the Commission will in turn act as Chairman of the Commission’ (paragraph 5) instead of the latter being appointed by the League, as provided for in the Treaty of Sèvres and the first draft of Article 14. As to the functions of the Commission, they were to consist of framing a

‘report defining these rights,² including rights of ownership, user and access. The report shall be laid before the Council of the League of Nations for confirmation, and when confirmed shall be binding on the Mandatory.’

In paragraph 2 of the draft it was further provided that

‘in the preparation of their report the Commission will consider all conflicting claims to any of the Holy Places and religious buildings or sites, and will endeavour in consultation with representatives of the confessions concerned to arrive at an agreed definition of existing rights.’³ If no agreement can be arrived at within a period to be fixed in each case by the Commission, the Commission, after hearing all parties, shall decide *judicially* on the claims of which it has had notice and shall embody such decisions in their report.’

Thus the contemplated Commission was to be both a conciliation body and a judicial authority. With regard to

¹ *Cmd.* 1708 (1922), p. 6.

² Referred to in Art. 13 of the mandate.

³ It may be noted that in this

draft the words ‘determine’ and ‘define’ are substituted for ‘study and regulate’ in the Treaty of Sèvres and the first draft of Art. 14 of the mandate.

the provision of the first draft concerning the permanent control of certain Holy Places or religious buildings by suitable bodies representing the adherents of the religion concerned, the second draft provided that 'the report of the commission *may* also contain *recommendations*' to that effect (paragraph 3). A permissive clause was thus substituted for a compulsory one, and 'recommendation' took the place of 'decision.'

While objection to the first draft of Article 14 came mainly from religious sources, the second was chiefly opposed within the Council itself. The main obstacle to the solution of the question of the Holy Places seems really to be not so much in the conflicting claims of the various Christian churches, Catholic, Orthodox or other, but in the difficulty of reconciling the political with the religious interests. It might have been thought that with the change of *régime* in Palestine such claims as have from time to time been put forward by various Governments with regard to the Holy Places would at least weaken, if not altogether disappear. Under the Turkish *régime* the care of the Holy Places and religious interests was largely used by various Governments as a mere cover for political intervention; this state of affairs, however, is hardly conceivable under the mandatory *régime*, and one fails to appreciate the objections raised within the Council to the above scheme as proposed by the Mandatory. It was stated by the French representative that, 'as he understood the British proposal, Article 14 was intended to set up a provisional Commission whose duty it would be to substitute a new *régime* for the *status quo*.'¹ It is, however, difficult to accept this construction of the above proposal, and the British representative expressly stated that this had never been the intention of the British Government.²

It was in such circumstances that the suggestion was

¹ O.J., Aug. 1922 (Part II.), p. 818.

² *Ibid.*, p. 819.

made to reserve Article 14 for further negotiations between the interested States, but the Italian representative doubted 'whether it was possible to adopt the Palestine mandate and to put it into operation if Article 14 remained in suspense.'¹ It was as a result of these various considerations that the above-quoted text of Article 14 was definitely embodied in the mandate. Declarations were then made by the Spanish, French, Italian and Belgian representatives on the Council to the effect that, in view of the special position of their countries in the Holy Land, their Governments considered the presence of their respective members upon the Commission as indispensable.² Upon the ratification of the mandate, a resolution was passed by the Council to the effect that 'the present negotiations will be resumed at Geneva on August 30 [1922], before the meeting of the next Assembly, expressly to solve the questions submitted for its decision under Article 14 of the mandate for Palestine.'³

A Memorandum was prepared in the meantime by the British Colonial Office on the Holy Places Commission and submitted to the Council at its twentieth session. According to the Memorandum⁴ the Commission was to be divided into three sub-commissions (Christian, Moslem and Jewish), each one of which would be competent to deal, to the exclusion of the other two, with questions solely affecting the religion concerned. It was further proposed that the Christian sub-commission might be composed of a French president, three Catholic representatives (Italian, Spanish and Belgian), three Orthodox (one of whom should be Greek and one Russian), one Armenian and one or possibly two representatives of the Abyssinians and the Copts. The Moslem sub-com-

¹ *O.J.*, Aug. 1922 (Part II.), p. 820.

² *Ibid.*, p. 822.

³ *Ibid.*, p. 825.

⁴ *Ibid.*, Nov. 1922 (Part II.), pp. 1153-1154.

mission, it was suggested, might consist of an Italian president together with a Palestinian, a French and an Indian Moslem; the Jewish, of an American president and a Palestinian, a British and a Portuguese (or Spanish) Jew. The chairman of the whole Commission was to be an American citizen and to act as a Court of Appeal in case of disputes between one Christian denomination and another. It was pointed out by the British representative, in submitting the Memorandum, that under the Turkish *régime* 'the rulers of the country were the judges in the case of controversies between different Christian sects,'¹ so that the new proposal substituted a Christian for a Mohammedan judge, without, on the other hand, entrusting this function to a representative of the Mandatory, in order to secure the most complete impartiality of the chairman.

These were the main features characterizing the last attempt made by the British Government, as the Mandatory for Palestine, to reconcile the political and religious interests involved in the question of the Holy Places Commission. The attempt, however, shared the fate of its predecessors, one of the main objections being that of the Catholic Church to a Protestant chairman of the Commission. Consequently no decision was taken by the Council, and the whole matter was submitted anew to the interested parties for further consideration. Nearly five years have elapsed since without any decision having been arrived at, and 'the Palestine Administration,' says the High Commissioner's Report for 1920-25, 'has not had the advantage of being able to refer to an external authority any difficulties and disputes that might arise.'² No serious difficulties, however, have in fact arisen up to the present time, and the Palestine Administration seems to have impartially maintained the *status quo*.

¹ *Ibid.*, p. 1151.

² *Colonial*, No. 15 (1925), p. 49.

The only provisional measure taken by the Mandatory in connection with the Holy Places has been the enactment of the Palestine (Holy Places) Order in Council, 1924,¹ providing that 'no cause or matter in connection with the Holy Places or religious buildings or sites in Palestine or the rights or claims relating to the different religious communities in Palestine shall be heard or determined by any Court in Palestine' (Article 2). Pending the constitution of the Commission provided for in Article 14 of the mandate, such causes or matters are to be 'referred to the High Commissioner, who shall decide the question after making due enquiry into the matter in accordance with such instructions as he may receive from one of His Majesty's Principal Secretaries of State' (Article 3). It is to be pointed out, however, that these provisions do not affect the jurisdiction of the Religious Courts (provided for in the Palestine Order in Council, 1922), which has been limited to cases of individual concern. The question of the Holy Places and religious sites is, indeed, one in which churches and religious denominations as a whole are primarily concerned.

2. OBLIGATIONS CONNECTED WITH THE PRINCIPLE OF EQUALITY OF TREATMENT

The General Principle.—The juridical basis of the principle of equality of treatment as between the Mandatory and the other States Members of the League is to be found in the gratuitous nature of the mandatory trust. This question forms an integral part of the general theory of mandates² and cannot be entered into in detail here; a few preliminary remarks, however, seem to be necessary as an introduction to Article 18

¹ O.G., No. 123, Sept. 15, 1924.

² J. Stoyanovsky, *op. cit.*, pp. 158-178.

of the mandate, which extends the application of the above principle to Palestine.

It is now universally established that the charge of the Mandatory, like that of the *mandatarius* in Roman law and of the trustee in English law, is gratuitous. Consequently the Mandatory cannot legally attribute to himself any preferential treatment in territory placed under his mandate. He cannot derive any direct and exclusive material profits, either for himself or for his nationals, from the mandatory trust, although there can be little doubt that indirectly he may reap certain political and even economic or commercial advantages from such trust. What is meant by the above principle of gratuitous trust is that the Mandatory cannot legally create in the territory under his mandate such economic, administrative or other conditions as will place him in an advantageous position *vis-à-vis* the other States. This principle extends to various domains, economic, commercial, military, etc. We have seen, however, that, as far as military questions are concerned, an important derogation of the above principle has been made in the mandate for Palestine. On the other hand, equality of treatment has expressly been provided for in the economic domain (Article 18) and in matters regarding antiquities (Article 21). These questions will be dealt with successively in the following two sections.

(1) *Economic Equality of Treatment*.—The principle of equality of treatment in the economic, commercial and industrial domains is not peculiar to the mandates of the A category, of which the mandate for Palestine is one. It is one of the fundamental principles of the mandates system as a whole, in spite of a few local derogations which had to be made in certain cases for political considerations. Although Article XXII of the Covenant refers to this principle only in paragraph 5, namely, in connection with the mandates which have subsequently

become known as forming the B category, it has been clear from the very beginning that economic equality of treatment will be applied to the A mandates as well, as may be seen from the following extract :

‘ The Government of the United States desires to point out that during the peace negotiations at Paris leading up to the Treaty of Versailles it consistently took the position that the future peace of the world required that, as a general principle, any alien territory which should be acquired pursuant to the treaties of peace with the Central Powers must be held and governed in such a way as to assure equal treatment in law and in fact to the commerce of all nations. It was on account of, and subject to, this understanding that the United States felt itself able and willing to agree that the acquisition of certain enemy territory by the victorious Powers would be consistent with the best interests of the world. The representatives of the Principal Allied Powers, in the discussion of the mandate principles, expressed in no indefinite manner their recognition of the justice and far-sightedness of such a principle and agreed to its application to the mandates over Turkish territory.’ ¹

On the strength of this principle the United States Government has claimed that

‘ there be guaranteed to the nationals or subjects of all nations treatment equal in law and in fact to that accorded nationals or subjects of the mandatory Power with respect to taxation, or other matters affecting residence, business profession, concessions, freedom of transit for persons and goods, freedom of communication, trade, navigation, commerce, industrial property and other economic or commercial activities.’ ²

¹ *International Conciliation*, No. 166 (1921), pp. 304-305 (Note of May 12, 1920, addressed by the United States to the British Government). The terms ‘acquired’ and ‘acquisition’ in the above extract may not have been best calculated to uphold the

American point of view ; they seem, however, not to have been used in their legal sense, as far as may be gathered from the character of the Note itself.

² *Ibid.*, p. 306.

The reply of the British Government¹ clearly showed that they were in complete agreement with the United States as to the application of the above principle both in Palestine and Mesopotamia, but, for some reasons which have never been openly stated, the negotiations were not satisfactorily concluded till May 1922, after having lasted for two whole years.

The text of Article 18 of the mandate, extending the principle of equality of treatment to Palestine, may be considered as partly the result of the diplomatic negotiations with the United States, although it is practically the same (only a few verbal alterations having been made) as that embodied in the final draft of 1921.² The fact, however, that Article 18, as we shall see, accords equal opportunity only to the 'States Members of the League of Nations'—a formula originally designed for the exclusion of Germany from such benefits in mandated areas—necessitated further negotiations with the United States, which is not a Member of the League. These negotiations culminated in the signature, on December 3, 1924, of a convention between the United Kingdom and the United States of America respecting the rights of the Governments of the two countries and their respective nationals in Palestine.³ In virtue of this convention

'the United States and its nationals shall have and enjoy all the rights and benefits secured under the terms of the mandate to Members of the League of Nations and their nationals, notwithstanding the fact that the United States is not a Member of the League of Nations' (Article 2).⁴

¹ *Ibid.*, pp. 311-317 (Note of Aug. 9, 1920).

² *Cmd.* 1500 (1921), p. 11.

³ *Cmd.* 2559 (1925). The exchange of ratification took place in London on Dec. 3, 1925. This convention, which embodies in the preamble the complete text of the mandate, was registered with the Secretariat of the League of Nations. See *T.S. (L.*

of N.), vol. xliii. (1926), pp. 41-59.

⁴ An interesting provision—similar to that embodied in the convention between the United States and Japan concerning the mandates allocated to the latter—is that 'a duplicate of the annual report to be made by the Mandatory under Article 24 of the mandate shall be furnished to the United States' (Art. 4).

The above rights and benefits, so far as economic equality of treatment is concerned, are enumerated in Article 18 of the mandate, although this enumeration is by no means limitative and merely provides a series of illustrations of the general principle. It appears, indeed, from the minutes of various sessions of the Permanent Mandates Commission that a wide interpretation has been given to the provisions of the mandates dealing with equality of treatment, and although this has been done mainly in connection with other mandates, there is no apparent reason why the same should not apply to Article 18 of the mandate for Palestine.

The following is the text of Article 18 :

‘The Mandatory shall see that there is no discrimination in Palestine against the nationals of any State Member of the League of Nations (including companies incorporated under its laws ¹) as compared with those of the Mandatory or of any foreign State in matters concerning taxation, commerce or navigation, the exercise of industries or professions, or in the treatment of merchant vessels or civil aircraft. Similarly, there shall be no discrimination in Palestine against goods originating in or destined for any of the said States, and there shall be freedom of transit under equitable conditions across the mandated area.

‘Subject as aforesaid and to the other provisions of this mandate, the Administration of Palestine may, on the advice of the Mandatory, impose such taxes and customs duties as it may consider necessary, and take such steps as it may think best to promote the development of the natural resources of the country and to safeguard the interests of the population. It may also, on the advice of the Mandatory, conclude a special customs agreement

¹ The corresponding provision in the B mandates is more explicitly drafted in this particular point; it speaks of ‘companies and associations organized in accordance with the law of any of the Members of

the League of Nations’ (Art. 6 or 7, as the case may be, para. 5). There can be no doubt, however, that ‘its’ in the above Art. 18 refers to ‘State Member of the League of Nations’ and not to ‘Mandatory.’

with any State the territory of which in 1914 was wholly included in Asiatic Turkey or Arabia.'

As may be seen from this text, the two paragraphs of Article 18 have distinct objects in view. The first aims at securing equality of treatment for all Members of the League, while the second is mainly concerned with the interests of the mandated territory and its population. The two paragraphs combined establish the general principle affecting territories under A mandate, namely, that while economic and commercial equality is guaranteed to all States Members of the League, economic and commercial freedom is not. Provided all such States are equally treated, and subject to the consent of the Mandatory, the Administration of Palestine is entitled to impose such import or export duties or to promulgate such laws regarding concessions, taxation, etc., as may best be in the interests of the territory. In other words, the policy of the 'open door' is not to be applied in Palestine. To take a practical illustration: Palestine, which is a wine-producing country, may impose, if it wishes, even prohibitive duties on imported wines, but such duties have to be similar as regards wines originating in the various countries; they cannot be higher, say, for Spanish wines and lower for French wines, or *vice versa*. This applies equally to cases in which the Mandatory may be concerned. Suppose that in order to stimulate local industry the interests of Palestine require that its internal market should be protected against imported cloth, this will affect British as well as other manufacturers, since the mandate allows of no exception to be made in favour of the Mandatory or his nationals. Duties can only be directed against goods the importation of which may be restricted or prohibited in the interests of the country, but not against States in which such goods originate. It would, for instance, be contrary to the spirit if not to the letter

of Article 18 if the Administration of Palestine should impose prohibitive duties on a given commodity, not because this is required by local interests but because the commodity in question happens to be exported mainly or exclusively from a certain State. This, however, does not mean that Palestine is deprived of such bargaining assets as may enable it to obtain reciprocal or compensating economic advantages from foreign States. The only consideration by which the Administration of Palestine is to be guided in imposing duties upon or granting facilities to foreign imports is that of the interests of the territory. This clearly appears from the second paragraph of Article 18, as quoted above.

In this connection it may be pointed out that the extension of such benefits as those of Imperial preference to Palestine¹ cannot result in reciprocity of preferential treatment by Palestine of British or Imperial goods; such preference can only be unilateral, namely, granted to and not by Palestine, if the provisions of the mandate are not to be infringed. The Secretary of State for the Colonies has, indeed, unequivocally declared that Palestine, among other mandated territories, is precluded by the mandate 'from according a preference to British Empire goods.'² The same seems to be true with regard to any other economic, commercial or financial benefits that Palestine may derive under various Acts of Parliament, although this is more open to question, as may be seen from the debate which took place in the House of Commons on the Palestine and East Africa Loans (Guarantee) Bill. An amendment was moved during the committee stage of the Bill to the effect

'that no part of the moneys secured by the guarantees

¹ It is hardly necessary to refute the argument that such an extension would imply *ipso facto* that Palestine had become an integral part of the British Empire (see the *Morning Post* May 14, 1925). The Imperial

Parliament can, if it wishes, grant the very same benefits to any foreign country. The name given to such benefits matters but little.

² *P.D.* (H. of C.), vol. 207, col. 1683.

mentioned in this Act shall be expended on plant, machinery, or equipment which has not been manufactured in the United Kingdom or the British Empire . . . provided that the provisions of this paragraph shall not apply . . . in the case of any such plant, machinery or equipment required for mandated territories.’¹

The exclusion of such territories from the application of the amendment was understood to be required in accordance with the provisions of the mandates, and this seems to have been the opinion of the Under-Secretary of State for the Colonies,² who, it may incidentally be mentioned, had previously been the British member on the Permanent Mandates Commission. A more restricted interpretation, however, of the Mandatory’s obligations under Article 18 of the mandate was given by the Secretary of State for the Colonies. After having drawn a distinction between general trade—with regard to which he admitted that the Mandatory has not got ‘anything like a monopoly’ in Palestine—and public works, in respect of which the interests of British manufacturers are guaranteed by the normal procedure to be followed by all Crown agents of the colonies, the Colonial Secretary is reported to have said :

‘As regards the mandated territories I am not sure that it is desirable to raise that issue, or to go so far in laying down a definite proposition of this kind as the amendment seeks to do. After all, when we have given export credit facilities or trade facilities to other countries entirely outside the British Empire, we have regarded ourselves as perfectly entitled to expect some return for that special financial assistance in the form of a stipulation of this kind, and I am not prepared to accept the sweeping suggestion that we are precluded from making any stipulation of this kind in a mandated territory by way of return for the guarantee.’³

¹ *Ibid.*, vol. 200, col. 2369.

² *Ibid.*, col. 2375.

³ *Ibid.*, col. 2374.

It may be pointed out, however, that the position of mandated territories is quite different in this respect from that of any foreign country, owing to the fact that in the former the Mandatory is under special obligation to safeguard the principle of equality of treatment. In dealing with foreign countries, it is open to the British Government to ask, in exchange for financial assistance, for any advantages it may think best in the interests of its nationals, while in the case of mandated territory it is first to be ascertained if such advantages are not inconsistent with the provisions of the mandate. Moreover, the interests involved in the latter case are not only those of such States as are entitled to claim the benefits of equal opportunity, but also those of the inhabitants of the territory concerned. This point was emphasized in course of the above debate in the following terms :

‘After all, the mandated territories are not parts of the British Empire. We hold them in trust, for their benefit, to [?] the League of Nations, and we have to administer them, not in our own interests, but in the interests of the native inhabitants. . . . While I agree that if we make a loan to these countries we get benefits, because, somehow or other, every loan must take the form of the export of manufactured goods sooner or later, to make mandated territories pay more than is necessary for goods that they require is not right.’¹

As we have seen, indeed, the interests of the inhabitants are specially safeguarded in Article 18 of the mandate in connection with the principle of equality of treatment, and any procedure which would adversely affect these interests could hardly be considered as consistent with the provisions of the mandate.

As far as concessions are concerned, they are referred to in the general provision that, subject to the principle

¹ *P.D. (H. of C.)*, vol. 200, col. 2377.

of equality of treatment, 'the Administration of Palestine may, on the advice of the Mandatory . . . take such steps as it may think best to promote the development of the natural resources of the country and to safeguard the interests of the population' (Article 18, paragraph 2). A comparison between this provision and the corresponding clause in the B mandates clearly indicates the difference. It is, indeed, provided in the latter that 'concessions having the character of a general monopoly shall not be granted' unless they are 'of a purely fiscal character in the interest of the territory under mandate and in order to provide the territory with fiscal resources which seem best suited to the local requirements' (Article 6 or 7, as the case may be, paragraph 4).¹ No such stipulation is inserted in the mandate for Palestine, so that one is justified in inferring that any concessions may be granted and any monopoly established in that territory, provided the direct beneficiary is the territory itself and that as a result no preferential treatment is given to any particular State, including the Mandatory. True, it has been claimed by the United States

'that no exclusive economic concessions covering the whole of any mandated region or sufficiently large to be virtually exclusive shall be granted, and that no monopolistic concessions relating to any commodity or to any economic privilege subsidiary and essential to the production, development or exploitation of such commodity shall be granted.'²

But this seems not to have been conceded as far as Palestine is concerned, owing to its special position. As to concessions that do not result in a monopoly, they are to be granted, according to the B mandates and the

¹ A provision to this effect is equally to be found in the mandate for Syria (Art. 11, para. 4).

² *International Conciliation*, No. 166 (1921), p. 306.

mandate for Syria, 'without distinction on grounds of nationality between the nationals of all States Members of the League.' Subject to the provisions of Article 11, paragraph 2 of the mandate, this seems equally to be the principle with regard to Palestine.¹

It appears from what has been said above that, while the interests of the various Powers concerned with the natural resources of the tropical areas have been placed, if not above, at least in a position of greater prominence than those of the local populations, in Palestine—as well as in the other territories under A mandate—the interests of the local community have been first considered. The right of the Administration of Palestine to 'impose such taxes and customs duties as it may consider necessary' seems, indeed, indispensable in order to encourage local industry in a country like Palestine, being as it is in the early stages of its economic development. On the other hand, the tropical areas under B mandates are of greater importance than Palestine to world trade and industry on account of their raw materials, and this is presumably why the interested Powers have insisted on and obtained a wider application of the principle of equal opportunity in these areas as compared with Palestine and the other territories under A mandate.

The final provision of Article 18 (paragraph 2 *in fine*)

¹ In this connection it may be mentioned that on the day of the conclusion of the Treaty of Lausanne an exchange of Notes took place between the British and French delegates to the effect that: 'Within a period of one year from the coming into force of the treaty of peace of to-day's date, the British Government [the French Government, respectively] will have the power, in the territories detached from Turkey in which it exercises authority as Mandatory, to proceed to the repurchase of concessions for public services of which French nationals [British nationals, respectively], or

Turkish companies in which the interests of such nationals are preponderant, may be the beneficiaries,' *Cmd.* 1946 (1923). In view of the principle of equality of treatment as embodied in the mandate, the expressions 'British Government' and 'French Government' can only refer to those Governments *in their capacity as Mandatories*, or in other words, to the local Administrations of Palestine and Syria acting with the approval of the respective Mandatories. Such, indeed, was the case of the repurchase of the Jaffa-Jerusalem railway from a company in which mostly French nationals were interested.

allows the Administration of Palestine, on the advice of the Mandatory, to 'conclude a special customs agreement with any State the territory of which in 1914 was wholly included in Asiatic Turkey or Arabia.' This was intended to counteract the economic consequences that might have resulted from the new political boundaries cutting across territories which all formed part of one State, namely the Turkish Empire. The scope of the above provision, however, as may be gathered from its wording, is limited to the following territories: Palestine, Syria, Iraq and the Hedjaz (Arabia); it does not include Egypt or Turkey itself. It is also limited to a special customs agreement and nothing more. It certainly is not—and indeed cannot be—of the same character as the provision of the B mandates authorizing the Mandatory 'to constitute the territory into a customs, fiscal and administrative union or federation with the adjacent territories under his own sovereignty or control' (Article 9 or 10, as the case may be). The negotiations which took place between Great Britain and the former King of the Hedjaz concerning the establishment of a federation of States—in which Palestine, as generally understood, was also to be included—had nothing to do with the above provision, and it may be open to doubt whether they were at all consistent with the special position of Palestine. But this only by the way, as, with the change of *régime* in the Hedjaz, the whole question has receded into the background.

In virtue of the above provision—still in draft form at the time—a customs agreement was concluded between Palestine and Syria, under the signatures of their respective High Commissioners.¹ The main principle laid down in the agreement was that 'no duties are chargeable upon goods exported from or imported to Syria, or *vice versa*,

¹ O.G., No. 52, Oct. 1, 1921.

which are the local produce of the countries concerned.’¹ This preferential treatment, mutually granted by Palestine and Syria, is strictly limited to the two territories,² and it is hardly necessary to point out that it cannot extend to their respective Mandatories without constituting a breach of the provisions of both mandates (Article 18 of the mandate for Palestine and Article 11 of the mandate for Syria). The principle of freedom of transit laid down in Article 18 (paragraph 1 *in fine*) is recognized by Palestine as regards goods ‘manifested in transit to Syria,’ with special reference to the port of Haifa. This port, among other ‘Eastern ports,’ has been declared in the Treaty of Sèvres as being ‘of international concern,’ with the stipulation that ‘free zones shall be provided in these ports’ (Article 335), and that ‘the nationals, goods and flags of all States Members of the League of Nations shall enjoy complete freedom in the use of the port’ and be ‘treated on a footing of perfect equality’ (Article 336). The reason why Haifa has been declared a ‘port of international concern’ may be gathered from the following quotation:

‘Haifa, which in the past served only Turkish territory, now handles traffic destined for, or originating in, the territories under British and French influence³ respectively; and its commercial importance will be considerably enhanced if and when the projected scheme of rail communication with Mesopotamia is adopted. In this event the port will undoubtedly serve as an *entrepôt* for the

¹ Report on the Administration of Palestine, July 1920-Dec. 1921, p. 25.

² On the occasion of the exchange of Notes between the British and German Governments which resulted in the accession of Palestine to the Anglo-German Commercial Treaty of December 1924, it was stated that ‘His Majesty’s Government have no intention of extending the restricted

preferential treatment granted by Palestine to Syria to any State which does not fall under the terms of the last part of Article 18 of the Palestine Mandate’ (*T.S. (L. of N.)*, vol. liv. (1926-27), p. 412).

³ This is a somewhat anachronistic reference to the provisions of the Sykes-Picot Agreement with its various ‘zones of influence.’

important traffic to and from Mesopotamia and possibly beyond.'¹

It was expressly provided in the Treaty of Sèvres that 'the régime laid down for the above ports shall not prejudice the territorial sovereignty' (Article 335 *in fine*).

(2) *Archæological Research and Antiquities*.—Palestine, as is well known, is of great interest to that part of the scientific world which is concerned with history, archæological research and antiquities. In view of this interest, it has been provided in the mandate that

'the Mandatory shall secure the enactment within twelve months from this date,² and shall ensure the execution of a Law of Antiquities based on the following rules. This law shall ensure equality of treatment in the matter of excavations and archæological research to the nations of all States Members of the League of Nations' (Article 21).

This provision is based on Article 421 of the Treaty of Sèvres and is common to the A mandates. Explicit reference was made to this Article of the treaty in the draft mandate (Article 21),³ as at that time (August 1921) it was still thought that the Treaty of Sèvres would become operative. In its present form Article 21 of the mandate reproduces *in extenso*, and applies to Palestine, the provisions of the above Article 421 of the treaty, together with the annexe, instead of simply referring to it, as did the draft.

The provisions of the annexe, as inserted *mutatis mutandis* in the mandate, are the following :

'(1) "Antiquity" means any construction or any product of human activity earlier than the year A.D. 1700.

'(2) The law for the protection of antiquities shall proceed by encouragement rather than by threat.

¹ Report on the Administration of Palestine, July 1920-Dec. 1921, pp. 24-25.

² July 24, 1922.

³ *Cmd.* 1500 (1921), p. 12.

‘Any person who, having discovered an antiquity without being furnished with the authorization referred to in paragraph 5, reports the same to an official of the competent Department, shall be rewarded according to the value of the discovery.

‘(3) No antiquity may be disposed of except to the competent Department, unless the Department renounces the acquisition of any such antiquity.

‘No antiquity may leave the country without an export licence from the said Department.

‘(4) Any person who maliciously or negligently destroys or damages an antiquity shall be liable to a penalty to be fixed.

‘(5) No clearing of ground or digging with the object of finding antiquities shall be permitted, under penalty of fine, except to persons authorized by the competent Department.

‘(6) Equitable terms shall be fixed for expropriation, temporary or permanent, of lands which might be of historical or archæological interest.

‘(7) Authorization to excavate shall only be granted to persons who show sufficient guarantees of archæological experience. The Administration of Palestine shall not, in granting these authorizations, act in such a way as to exclude scholars of any nation without good grounds.

‘(8) The proceeds of excavations may be divided between the excavator and the competent Department in a proportion fixed by that Department. If division seems impossible for scientific reasons, the excavator shall receive a fair indemnity in lieu of a part of the find.’

The Department referred to in the above provisions was established in anticipation of Article 21 of the mandate at the same time as the civil administration itself, *i.e.* in July 1920. A Law of Antiquities¹ was

¹ Antiquities Ordinance, 1920, O.G., No. 40, April 1, 1921. For a detailed analysis of the Ordinance see N. Bentwich and F. M. Goadby,

The Antiquities Law of Palestine, in *J.C.L.*, vol. vi. part iv. (Nov. 1924), pp. 251-254.

subsequently enacted, and an advisory board, representing the various bodies interested in archæological research in Palestine, was set up under the chairmanship of the Director of the Department of Antiquities, for the purpose of advising the Department on all important matters connected with archæological activities in Palestine, such as excavations, etc., including the granting of permits to excavate.

It has been frequently pointed out in the various reports of the Administration that it regards itself as a trustee on behalf of all those who are interested in archæological research in Palestine. The Administration is equally the trustee on behalf of Palestine itself; and the mandate has made it a duty for the Administration to safeguard the interests of Palestine in this respect by granting priority to the Department of Antiquities in the acquisition for Palestine of all local finds, and by prohibiting the exportation of any such finds unless under special licence from the Department (paragraph 3). The principle of equality of treatment applies only to 'excavations and archæological research' or in the matter of granting the necessary authorization to excavate (paragraph 7); in respect of the acquisition of finds, the right of the finder to claim them can only be exercised after that of the Department acting on behalf of Palestine. In this matter the Administration may on occasion find itself in a somewhat difficult position; but it is clearly its duty to act in the interests of the territory, even if they happen to clash with those of another country, be it the Mandatory himself. The Department of Antiquities cannot, in principle, renounce the acquisition of any local antiquity for Palestine unless it is prevented from acquiring it by financial considerations. It is not to be guided by reasons such as the importance and value of the find to a certain museum or collection in any other country, including that of the

Mandatory, unless it is satisfied that the interests of Palestine in this respect are fully safeguarded.

3. OBLIGATIONS RESULTING FROM THE PRINCIPLE OF THE SUPERVISION OF THE MANDATE BY THE LEAGUE OF NATIONS

The right of supervision over the Mandatory's administration assigned to the League of Nations by the mandates system and the special machinery set up for its exercise are the same both in nature and extent in all the three categories of mandates. Such difference as exists between these categories involves only the relations of the Mandatories with the territories respectively entrusted to them, but not those of the Mandatories and the League. Consequently the various questions of principle and procedure connected with the exercise of this right of supervision are of a similar character in all the mandated territories, including Palestine. These questions, however, concern mainly the general theory of mandates,¹ and it is only incidentally that they can be mentioned here.

The League supervision with regard to the mandate for Palestine may be dealt with under the following headings:

- (1) Definition of the Terms of the Mandate and their Modification.
- (2) Interpretation of the Terms of the Mandate.
- (3) Examination of Annual Reports and Petitions.

(1) DEFINITION OF THE TERMS OF THE MANDATE AND THEIR MODIFICATION

The question as to the competent authority for the definition of the terms of the mandates gave rise to a good deal of controversy in the early stages of the

¹ J. Stoyanovsky, *op. cit.*, pp. 119-157.

elaboration and application of the mandates system. The controversy mainly centred on the interpretation of paragraph 8 of Article XXII of the Covenant, but with regard to the A mandates, the Treaty of Sèvres, unlike that of Versailles, has explicitly provided that

‘the terms of the mandates in respect of the above territories [Syria and Mesopotamia (Article 94 of the Treaty) and Palestine (Article 95)] will be formulated by the Principal Allied Powers and submitted to the Council of the League of Nations for approval’ (Article 96).

It is on the strength of this Article, as it seems, that the draft mandate for Palestine contained in the final paragraph of its premises a provision to the effect that the Council of the League ‘hereby *approves* the terms of the said mandate as follows :’ A similar provision was inserted in all the other draft mandates, but the Council has found it necessary, probably in order to assert more definitely its right of supervision, to substitute for the above-quoted paragraph the following clause :

‘Whereas by the afore-mentioned Article XXII (paragraph 8), it is provided that the degree of authority, control or administration to be exercised by the Mandatory, not having been previously agreed upon by the Members of the League, shall be explicitly defined by the Council of the League of Nations ; [the latter] confirming the said mandate, *defines* its terms as follows :’

So that in law it was the Council which defined the terms of the mandate ; and there would, therefore, be some inconsistency between the last paragraph of the premises of the A mandates as amended by the Council of the League, and the above-quoted provision of Article 96 of the Treaty of Sèvres, unless at the time of the ratification of the above mandates the provisions of the treaty were considered as non-existent even in so far as the man-

dated territories were concerned. This, however, seems to be open to question, if inference may be drawn from the fact that the vital provisions of the Treaty of Sèvres regarding mandates, although not reproduced in the Treaty of Lausanne, have in fact been given effect to and fully observed. The only other explanation which can be given of the above inconsistency is that the Council of the League was anxious to assimilate—as far as this could be done—the general provisions of the preambles of the various mandates in order to restrict to a minimum the possibilities of divergent interpretation and of controversy.

In fact, the definition of the terms of the mandate for Palestine was made by the British Government's experts, colonial or other, after it had been found impossible for the Milner Commission on Mandates, appointed in the spring of 1919, to proceed with the task of elaborating one common formula for the various A mandates, 'in consequence of a divergence of views.'¹ The draft thus prepared was first to be 'approved by the Allied Powers interested,' and subsequently 'communicated to the Council of the League of Nations.'² Some doubts seem to have prevailed at the time as to what exactly such 'communication' meant, until the Council asserted its right of 'defining,' or, more precisely, taking part in the definition of the terms of the mandates. This right has indeed been fully exercised by the Council of the League, as clearly appears from the minutes of its sessions in which the drafts of the mandates have been discussed Article by Article and modified in various instances. The most striking of these, so far as the mandate for Palestine is concerned, was the substitution of a provision elaborated by the Council itself for draft Article 14 prepared by the Mandatory, as we have already seen.

¹ *International Conciliation*, No. 166 (1921), p. 315.

² *Ibid.*

With regard to the revision of the text of the mandate in future, the Council of the League has equally asserted in a more definite form its right of supervision by amending the draft of Article 27, which provided that

‘the consent of the Council of the League of Nations is required for any modification of the terms of the present mandate, provided that in the case of any modification proposed by the Mandatory, such consent may be given by a majority of the Council.’¹

In deleting the last part of this Article, beginning with the words ‘provided that,’ the Council seems to have definitely laid down that unanimity is necessary for any modification whatever of the terms of the mandate, and this even when such modification is proposed by the Mandatory. This has been done also in the case of all the other mandates of the various categories, so that an additional guarantee, as compared with the provisions of the drafts, has been given by the Council to the stability of the terms of the mandates. It may have, however, the inconvenient result of hindering, if not preventing, a suitable modification from being made. It would seem that some sort of special position should have been assigned to the Mandatory in this respect, owing chiefly to the fact that he is undoubtedly in a far better condition than any of the other States that may be represented on the Council for judging if and when a given modification should be made in the existing terms of the particular mandate which he is to carry into effect. On the other hand, as far as the A mandates are concerned, the right of modification may be claimed by the Powers which have originally been entrusted by treaty with the definition of the terms of such mandates, namely the Principal Allied Powers. The comparatively fixed character, however, of the terms of the mandates

¹ *Cmd.* 1500 (1921), p. 13.

seems not to be in doubt, as may be gathered from an answer given by the Secretary of State for the Colonies to the effect that it was a mistake to think that those terms were 'open to periodic review.'¹ With regard to the mandate for Palestine, this question is at present mainly of theoretical importance, as there seems to be nothing in this mandate which might give rise in the near future to a proposal for modification, with the possible exception of Article 4 dealing with the Jewish agency.² Moreover, the latitude of interpretation allowed to the Council of the League, acting upon the advice of the Permanent Mandates Commission, on the one hand, and to the Permanent Court of International Justice on the other, may largely prevent, or at least postpone, any proposal for modification from being made.

(2) INTERPRETATION OF THE TERMS OF THE MANDATE

Although no provision is embodied in the mandate recognizing the Permanent Mandates Commission as being competent to interpret its terms, it may now be considered as definitely established that the Commission would not be exceeding its powers in advising the Council of the League on any question of interpretation, with the possible exception of those which are to be dealt with by the Permanent Court of International Justice in virtue of Article 26 of the mandate. This may be based on the wide terms of reference of the Commission as embodied in Article XXII of the Covenant (paragraph 9), namely, that it is

¹ *P.D.* (H. of C.), vol. 207, col. 675.

² The particular provision which may be involved in such modification—if any is found necessary—is the following: 'The Zionist Organiza-

tion, so long as its organization and constitution are in the opinion of the Mandatory appropriate, shall be recognized as such agency' (Art. 4, para. 2). The assumption is based on the contemplated extension of the Jewish agency.

its duty 'to advise the Council on all matters relating to the observance of the mandates,' and no exception has ever been taken to the practice which has been gradually introduced into the mandates system. The Permanent Mandates Commission has thus been able to evolve a series of fundamental principles based on Article XXII of the Covenant and the particular mandates. On certain vital occasions the Commission has paid more attention to the spirit of the mandates system as a whole than to the letter of the various texts, and its general tendency has been towards asserting the rights of the inhabitants of the mandated territories and pointing out the corresponding duties of the Mandatories.

Such tendency equally appears from the general interpretation given by the Permanent Mandates Commission to the underlying principles of the mandate for Palestine, mainly in connection with its dual aspect. We have seen how carefully the mandate takes every opportunity to stipulate that the rights, interests and position of the inhabitants of Palestine should not be prejudiced, and the Permanent Mandates Commission was only doing its duty in paying special attention to so essential a provision. When for the first time the annual report on the administration of Palestine was submitted by the Mandatory for examination by the Commission, the opportunity was taken by the latter to outline the main principles on which the mandate was based ¹ and to interpret these principles in accordance with the spirit of the mandates system as a whole. It seems, however, that at the time the peculiar nature of the mandate for Palestine was not yet fully appreciated by the Commission, and the special provisions which constitute the peculiarity, namely, those connected with the national home, seem to have been given a somewhat restrictive interpretation. True, it is in accordance with general

¹ See *P.M.C.*, Minutes of 5th Session, pp. 188-189.

rules that such interpretation should be given to exceptional provisions, but it may be asked whether the national home is to be regarded as of exceptional character within the orbit of the mandates system rather than as an institution *sui generis* which, in the special case of Palestine, has merely been combined with that system. In favour of the latter contention it has been pointed out that the national home concept was associated with Palestine prior to the mandate, and that the latter was allocated to Great Britain mainly on this account.¹ It is in the direction of wider interpretation of the provisions relating to the national home—without at the same time restricting the construction placed upon the others—that the Permanent Mandates Commission seems to have moved when it was faced, on subsequent occasions, with the general problems of Palestine.

In conclusion, it may be said that in non-disputed matters the Permanent Mandates Commission constitutes the most important source of interpretation of the terms of the mandates. In the great majority of cases its recommendations are endorsed by the Council of the League and embodied in the mandates system. The Commission thus contributes to the formation of the law of mandates. Judicial matters, however, arising in case of disputes, cannot be referred to the Permanent Mandates Commission, which is only an advisory body, and a special provision has been inserted in the mandate for Palestine (Article 26), as well as in the other mandates, to the effect that

‘the Mandatory agrees that if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be

¹ See *P.M.C.*, Minutes of 7th Session, p. 111.

submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations.'

The Permanent Court of International Justice and Article 26 of the Mandate.—The jurisdiction conferred by the mandate upon the Permanent Court of International Justice is of a compulsory character only so far as the Mandatory, in his capacity as such, is concerned; it is not compulsory either for the Mandatory in his capacity of Member of the League, or for any other Member. This clearly appears from the above text, and is also borne out by the amendment introduced by the Council in draft Article 26 of the mandate—as well as in the other draft mandates—in view of the fact that 'Members of the League other than the Mandatory could not be forced against their will to submit their differences to the Permanent Court of International Justice.'¹ Indeed, it was provided in the draft that 'if any dispute whatever should arise . . . this dispute shall be submitted to the Permanent Court of International Justice. . . .' Such a clause would have been inconsistent with Article 13, paragraph 3 of the Covenant, which explicitly provides that justiciable disputes arising between Members of the League shall be referred to 'the Court agreed on by the parties to the dispute or stipulated in any convention existing between them.' Members of the League are accordingly free to choose the Court they prefer, and the mandate being, as far as they are individually concerned, *res inter alios acta*, its provisions cannot bind them. With regard to the Mandatory, however, the jurisdiction of the Permanent Court constitutes one of the means of control placed by the mandates system in the hands of the League for the benefit of its Members.

¹ Report of Viscount Ishii to the Council on the draft B mandates, *O.J.*, Aug. 1922 (Part II.), p. 854.

Article 26 has been thoroughly dealt with by the Permanent Court of International Justice and interpreted in its various aspects. If the Court has jurisdiction to interpret the provisions of the mandate, it is surely competent to interpret the very provision which gives it such jurisdiction and which itself forms part of the mandate. The interpretation of Article 26 is indeed a preliminary condition for the exercise of the jurisdiction of the Permanent Court in case of a dispute of application or interpretation of the mandate, because a controversy as to the above Article would prevent the consideration of the substance of any such dispute that may arise between the Mandatory and another Member of the League.

The exercise of the jurisdiction of the Permanent Court of International Justice under Article 26 of the mandate implies, as may be seen from the above-quoted text, the following conditions :

1. The dispute is to be 'between the Mandatory and another Member of the League.'¹
2. It is to be 'relating to the interpretation or the application of the provisions of the mandate.'
3. It is to be one that 'cannot be settled by negotiation.'

Before these conditions are dealt with and examined, it may be asked whether or not the interpretation of Article 26 as a whole should be influenced by the fact that this provision constitutes an exception to the general principle that the jurisdiction of the Permanent Court of International Justice is not of a compulsory character. 'Since the compulsory jurisdiction of the Court is not the rule,' says one of the dissenting judges in the case of the Mavrommatis Palestine concessions, 'and since Article 26 of the Palestine mandate constitutes an

¹ Including the United States, in virtue of the convention of Dec. 3, 1924. See *supra*, Economic Equality of Treatment, p. 305.

exceptional clause creating such jurisdiction, that Article cannot be interpreted extensively.' ¹ It may be maintained, however, that the above provision (common to all mandates) forms an integral part of the mandates system, establishing as it does the general rule that Mandatories, in their capacity as such, are in certain definite cases subject to the compulsory jurisdiction of the Permanent Court. Consequently the provision would have to be interpreted in the light of the general principles of the mandates system rather than in consequence of its exceptional character within the rules governing the jurisdiction of the Permanent Court. ² In view of the fact that a more extensive interpretation than the one advocated by the dissenting judges has been given in the above case to Article 26 of the mandate, it may be said that the latter opinion has impliedly been adopted by the Permanent Court. This will equally appear from the examination of the above-mentioned conditions relating to the jurisdiction of the Court.

1. The first of these conditions, namely, that the dispute is to be between the Mandatory and another Member of the League, has given rise to the question whether such Member can bring before the Permanent Court an action against the Mandatory on behalf of one or more of its nationals. The majority of the Court were of the opinion that

'it is an elementary principle of international law that a State is entitled to protect its subjects, when injured by acts contrary to international law committed by another State, from whom they have been unable to

¹ *P.C.*, Series A, No. 2, p. 85: Dissenting opinion by M. Oda.

² This seems to be the opinion of M. Nyholm, one of the judges dissenting from Judgment No. 10 of the Court. Speaking of the 'general

rule of Art. 26,' he expresses the opinion that 'this rule establishes as a guarantee for the Powers a system of control which ensures that the Mandatory will act in conformity with the provisions of the mandate' (*ibid.*, No. 11, p. 30).

obtain satisfaction through the ordinary channels. By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own rights—its right to ensure, in the person of its subjects, respect for the rules of international law. . . . The fact that Great Britain and Greece are the opposing parties to the dispute arising out of the Mavrommatis concessions is sufficient to make it a dispute between two States within the meaning of Article 26 of the Palestine mandate.’¹

The dissenting opinions, however, of various judges have tended to restrict the interpretation of Article 26 in connection with the above condition. Lord Finlay, while agreeing that ‘there are many cases in which a genuine dispute between two nations has originated in a wrong alleged to have been done to the subject of one of these two nations by the other,’ comes to the following conclusion :

‘It is a mistake to suppose that Article 26 can be made applicable to a dispute between an individual and a mandatory State merely by the intervention, as litigant, of the Government of which that individual is a subject. To justify proceedings under Article 26 there must have been in existence, before the *requête* ² was filed, a dispute between the Mandatory and another nation Member of the League of Nations.’³

Substantially the same conclusion is arrived at by another dissenting judge, John Bassett Moore, who is of the opinion that

‘the Article [26] by its very terms includes only disputes which may arise “between the Mandatory and another Member of the League of Nations.” This obviously does not include a dispute between the Mandatory and

¹ *P.C.*, Series A, No. 2, p. 12.

Art. 40 of the Statute of the Court.

² The ‘written application’ of

³ *P.C.*, Series A, No 2, p. 38.

M. Mavrommatis. Had M. Mavrommatis been a Member of the League of Nations it would have been unnecessary for his Government to appear here. . . .'¹

Another argument in favour of this contention is raised by M. de Bustamante, who draws a comparison between Article 26 of the mandate for Palestine, as quoted above, and Article 13 of the mandate for East Africa. The first paragraph of the latter is identical with Article 26, but a second paragraph is added providing that 'States Members of the League of Nations may likewise bring any claims on behalf of their nationals for infractions of their rights under this mandate before the said Court for decision.' In the opinion of de Bustamante, therefore,

'claims on behalf of the nationals of States Members of the League of Nations for infractions of their rights under that mandate are not included among the disputes mentioned in the first paragraph of the Article, the only one which has been reproduced in the mandate for Palestine.'²

This discrepancy between the mandate for East Africa, on the one hand, and all the other mandates (including that for Palestine) on the other, is equally mentioned by Mr. Moore, who, however, draws no inference from it.³ On the other hand, M. Oda comes to the same conclusion as M. de Bustamante on this point.⁴

¹ *Ibid.*, p. 62.

² *Ibid.*, pp. 82-83.

³ *Ibid.*, p. 61.

⁴ *Ibid.*, p. 87. It may be of interest to note that the question as to the difference existing between the above Art. 13 and the corresponding Articles of the other mandates was also raised before the Permanent Mandates Commission. The object of securing one common text in the various mandates could be achieved either by suppressing the second paragraph of Art. 13 of the mandate for East Africa or by adding a similar

paragraph to the other mandates, and suggestions to both effects have been made by members on the Commission. The divergence of views as to which course should be recommended to the Council, as may be seen from the discussion (Minutes of 6th Session, pp. 55-56), was connected with the question whether the additional clause in Art. 13 was merely accidental or whether it had a special meaning. Opinions varied on this point, but the final course chosen by the Permanent Mandates Commission, not to insist on the

2. The second condition laid down in Article 26 is that the dispute brought before the Permanent Court of International Justice should be 'relating to the interpretation or the application of the provisions of the mandate,' that is to say, that it should involve one or more of such provisions, the non-observance or the violation of which is alleged by the claimant against the Mandatory. The question as to whether or not any—and if so, which—provisions of the mandate are involved in a given dispute may, however, give rise to considerable difficulty and a great deal of controversy. Such, for instance, was the case in the dispute regarding the Mavrommatis concessions. As we have already seen, the submission of the Greek Government was to the effect that the refusal of the Administration of Palestine to recognize the rights acquired by M. Mavrommatis constituted a breach of Article 11 of the mandate, explicitly referring to the international obligations of the Mandatory. While the Permanent Court was of the opinion that 'the Mavrommatis concessions in themselves are outside the scope of Article 11,'¹ it came to the conclusion that 'the international obligations accepted by the Mandatory, referred to in Article 11 of the mandate, certainly include the obligations arising out of Protocol XII of the Lausanne Treaty'² under which the Mavrommatis concessions were considered to fall. In other words, after having been excluded from the mandate as having no direct connection with Article 11, the Mavrommatis concessions have been re-admitted through a back-door by means of the incorporation of the Protocol into the mandate. Indeed, it was held by the Court that 'the Protocol is the complement of the

matter, may be considered as largely the result of the fact that the great majority of the judges on the Permanent Court implicitly assimilated the two texts by the interpretation

given on this point to Art. 26 of the mandate for Palestine.

¹ *P.C.*, Series A, No. 2, p. 19.

² *Ibid.*, p. 26.

provisions of the mandate in the same way as a set of regulations alluded to in a law indirectly form part of it.’¹ This ‘doctrine of incorporation,’ as it was called, is, however, objected to by Lord Finlay, one of the dissenting judges, who ‘cannot accept the view that Article 11 of the mandate is to be read as if it contained *in extenso* the provisions of the Protocol.’ In his opinion ‘the difference on this point was one which, if it had existed between the two governments, might have been submitted to the Permanent Court by consent; it could not have been compulsorily referred under Article 26.’² J. B. Moore is equally of the opinion that

‘the subject of “the recognition of concessions in Palestine” is exclusively governed by the Lausanne Protocol, and that, as this instrument does not provide for the submission to the Court of disputes relating to its interpretation and application, the Court cannot take cognizance of such disputes.’³

The same argument is used and the same conclusion reached by M. de Bustamante,⁴ and M. Oda also thinks that the provisions of the Protocol XII of Lausanne ‘are entirely unconnected with the legal relationship created by the mandate.’⁵

This is merely an illustration of the difficulties that may arise out of the above condition as laid down in Article 26 of the mandate.

3. As to the third and last condition, namely, that the dispute should be one that ‘cannot be settled by negotiation,’ it has been pointed out by the Court that it ‘realises to the full the importance of the rule,’⁶ but that, on the other hand, ‘negotiations do not of necessity always presuppose a more or less lengthy series of notes

¹ *Ibid.*, p. 31.

⁴ *Ibid.*, p. 84.

² *Ibid.*, p. 51.

⁵ *Ibid.*, p. 85.

³ *Ibid.*, p. 71.

⁶ *Ibid.*, p. 15.

and despatches.’¹ It was of the opinion that ‘it would be incompatible with the flexibility which should characterize international relations to require the two Governments to re-open a discussion which has in fact already taken place and on which they rely.’² This consideration, mainly of a practical character, seems, however, not to have prevailed with the dissenting judges, and J. B. Moore points out that

‘in deciding whether such negotiation has taken place the Court is not at liberty to interpret the word “negotiation” as a process by which Governments are enabled to evade their obligations. Although this superficial view may to some extent popularly prevail, yet, in the international sphere and in the sense of international law, negotiation is the legal and orderly administrative process by which Governments, in the exercise of their unquestionable powers, conduct their relations one with another and discuss, adjust and settle their differences.’³

Particular stress is laid on this condition by another dissenting judge, M. Pessôa, who says that the nations, being sovereign, ‘have the fundamental right to settle their disputes between themselves, and the interposition of an outside authority is only understandable when the former solution cannot be arrived at.’⁴ In the present case, however, the question in dispute has been discussed, according to M. Pessôa, ‘*personally and directly*’ by M. Mavrommatis with the British Government, and after quoting at length from various documents he arrives at the conclusion that ‘the *impossibility* of settling the dispute through diplomatic channels has in no way been proved.’⁵

From the above quotations of the various opinions it may be seen how strong were the grounds adduced by the dissenting minority, who took the view of the

¹ *P.C.*, Series A, No. 2, p. 13.

² *Ibid.*, p. 15.

³ *Ibid.*, pp. 62-63.

⁴ *Ibid.*, p. 88.

⁵ *Ibid.*, p. 93.

strictest interpretation of Article 26 of the mandate. The majority, however, adopted the wider interpretation, and the judgment of the Court may be said to have followed, in its particular sphere, the general attitude towards the mandates system prevailing in the League and its institutions. While endeavouring not to burden the Mandatory with such obligations as he did not, or was not willing to assume under the mandate, the Court has found its way to interpret the obligations of the Mandatory in a larger sense, just as has been done by the Permanent Mandates Commission with regard to the interpretation of the fundamental principles of the mandates system as a whole. The above decision, besides the additional guarantee it gives to the interested Powers, has thus resulted in strengthening the League control which in its judicial aspect is exercised by the Permanent Court of International Justice.

We have seen, however, that the third judgment of the Permanent Court relating to the Mavrommatis concessions (No. 10) upheld the preliminary objection taken by the British Government denying the Court's jurisdiction, and it appears from the opinions of dissenting judges that the decision was regarded by them as a departure from the above attitude. 'The same ground,' says one of the dissenting judges, 'which enables the judgment to find in Article 11 a restriction upon the jurisdiction would enable also to find such a restriction in the other Articles of the mandate, and the result would be that the Mandatory would become more or less free from control by the Powers.'¹ It may, however, be pointed out that in order that a given dispute should fall within the jurisdiction of the Permanent Court it is not enough for the Mandatory to be a party to it; the dispute must also be one that affects

¹ *Ibid.*, No. 11, dissenting opinion by M. Nyholm, p. 30. See also A. K. Kuhn, *The Mavrommatis Case on Re-*

adaptation of the Jerusalem Concessions, in *A.J.*, vol. xxii., April 1928, p. 385.

the provisions of the mandate. This seems to have been definitely laid down in Judgment No. 2, which was largely devoted to the interpretation of the underlying principles of Article 26 of the mandate. At the same time, in Judgment No. 10 the issue before the Court was of a specific character, and it by no means follows that a wide interpretation of the general rule laid down in Article 26 should entail a similarly wide interpretation of the various provisions of the mandate. The adoption of such a view would hardly be conducive towards strengthening the League's supervision over the mandatory Power.

(3) EXAMINATION OF ANNUAL REPORTS AND PETITIONS

The examination of annual reports and petitions by the Permanent Mandates Commission, unlike the two other forms of supervision previously dealt with, has the advantage of being periodically and regularly performed. The terms of the mandate have already been definitely settled, and the question of a new definition can only arise in the event of their modification, while the interpretation of these terms by the Permanent Court can only be called for in case of an actual dispute between the Mandatory and another State Member of the League. Moreover, Article 26 of the mandate is only concerned with the interests of such States (or their nationals) and not with those of the local community, which, not being a Member of the League, does not share the benefit of the above provision. It is for such reasons that the Permanent Mandates Commission has been entrusted with the supervision of the Mandatory's administration by means of the examination of his annual reports, and as we have seen, it has interpreted its duties in the widest possible sense, especially when the interests of the inhabitants were concerned. With these interests

in view, the Commission has been instrumental in, and largely responsible for, the introduction of a new form of supervision, resulting from the examination of petitions, which now constitutes an integral part of the mandates system. In the procedure laid down for the purpose of dealing with both reports and petitions, the prestige, position and interests of the Mandatory have naturally been taken into account, but the main object was and remains that of control and supervision.

Distinction between Reports and Petitions.—‘Reports’ and ‘Petitions’ are to be clearly distinguished from each other. This remark is not so superfluous as it might seem, for a certain confusion has actually taken place with regard to these terms. Thus, the Executive Committee of the Palestine Arab Congress submitted to the Permanent Mandates Commission at its fifth session a communication entitled ‘Report on the state of Palestine during the four years of civil administration’; and it was observed by the Commission that ‘although this document has been entitled a “Report” and not a “Petition,” both by its authors and by the British Government, the Commission thought it expedient to discuss it in accordance with the procedure laid down by the Council for petitions.’¹ The distinction between ‘report’ and ‘petition,’ however, is not merely a matter of expediency or a question of procedure, although such may have been the practical issue before the Commission; nor is it a question of terminology. If it is the Mandatory’s duty to submit annually his report to the Council of the League, it is also his exclusive right to do so. The right of petition may be considered as a necessary complement to the former—as indeed it is—but it is not based on the same principle. Besides being subject to a different procedure, petitions cannot have the same authority as reports, from the

¹ *P.M.C.*, Minutes of 5th Session, p. 196.

point of view both of their intrinsic merits and the discretion of the Permanent Mandates Commission with regard to their examination.

A similar question arose subsequently in connection with the communications submitted to the Permanent Mandates Commission by the Zionist Organization acting in its capacity of Jewish agency under the provision of Article 4, paragraph 2 of the mandate for Palestine. Strictly speaking, these communications could hardly be considered as petitions, since they were, in the words of the covering letter, 'primarily designed to assist the Permanent Mandates Commission by supplying it with information which might not otherwise be readily available.'¹ Such communications are more in the nature of 'memoranda,' as they are actually called, on the development of the Jewish national home in Palestine. But as the only procedure contemplated by the mandates system for all communications which are not 'reports' in the strict meaning of the term is that relating to petitions, the Permanent Mandates Commission has merely recommended in this connection that

'the Council should authorize it to place upon the term "petition," in the regulations governing the above procedure, a wider interpretation which will enable it to include under that term memoranda and memorials of all kinds relating to the administration of mandated territories.'²

No exact indication, however, was given by the Commission as to what part of the procedure regarding petitions should apply to communications of this kind.³

¹ *P.M.C.*, Minutes of 7th Session, p. 184.

² *Ibid.*, p. 219.

³ The resolution of the Council of the League of Nations (Jan. 31, 1923) distinguished between petitions submitted by 'communities or sections of the populations of mandated areas,' which 'should be sent to the Secre-

tariat of the League of Nations through the mandatory Government concerned' (para. 1), and petitions received 'from any source other than that of the inhabitants themselves,' which 'should be communicated to the Chairman of the Permanent Mandates Commission' (para. 3) (*O.J.*, March 1923, p. 200).

It merely observed that

‘there is no objection to the Zionist Organization continuing the procedure it has followed this year in communicating through the mandatory Power all documents which it wishes to bring to the notice of the Permanent Mandates Commission.’¹

It may, however, be pointed out that this procedure has been adopted merely on the ground of convenience, and that consequently no inference is to be drawn as to the nature of the Jewish agency from the fact that its petitions are forwarded to the League through the medium of the Mandatory. We have seen, indeed, that the above agency cannot be considered merely as a Palestinian body representing a section of the local population, and that the duties with which it is entrusted by the mandate extend beyond the boundaries of Palestine. Neither this nor any similar question of principle has, however, been raised in connection with the above procedure, which, although theoretically somewhat anomalous, may work smoothly and prove expedient in practice.

Form of Reports and their Examination.—The procedure regarding the examination of reports and petitions by the Permanent Mandates Commission forms part of the general theory and practice of the mandates system² and cannot be dealt with here. One point, however, may be mentioned in connection with the form of the reports in view of the recommendation made by the Commission that they should ‘contain in their titles the explicit statement that they are addressed to the Council of the League of Nations in conformity with Article XXII of the Covenant.’³ As far as the British reports are concerned, they used to be sent to Geneva in the form of

¹ *P.M.C.*, Minutes of 7th Session, 138-152.
pp. 219-220.

² *P.M.C.*, Minutes of 6th Session,

³ *J. Stoyanovsky, op. cit.*, pp. p. 172.

papers 'presented to Parliament by Command of His Majesty' or as 'Colonial' publications. Article 24 of the mandate for Palestine provides, however, that

'the Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council as to the measures taken during the year to carry out the provisions of the mandate. Copies of all laws and regulations promulgated or issued during the year shall be communicated with the report.'

Thus the latter is to be *made* to the Council and not merely forwarded to it in a form which may suggest that nothing more is being done than the carrying out of a formality.¹ The main practical importance of the question seems to lie in the effect it may have on public opinion in the Mandatory's own country, as it is essential—in order to prevent any possible surprise or dissatisfaction—that the public should be given, from the outset, every opportunity of distinguishing between what is commonly called a 'mandate' and a 'colony.'² It is equally of the first importance that such opportunity should be given to the administrative authorities in mandated territories so that they may clearly realize that they are responsible not only to their Home Governments but also, although indirectly, to the League. It has, indeed, been observed by the Permanent Mandates Commission

'that certain of the administrative authorities in mandated territories are imperfectly acquainted with the work

¹ The above recommendation of the Permanent Mandates Commission has eventually been given effect to, as may be seen from the following official title: 'Report by His Britannic Majesty's Government to the Council of the League of Nations on the Administration of Palestine and Transjordan for the year 1925' (*Colonial*, No. 20). The report for the year 1926 (*Colonial*, No. 26) similarly indicates in its title that it was made to the Council of the League.

² This is the more important since the public at large is certainly less acquainted with such documents as the Minutes of the Sessions of the Council and the Permanent Mandates Commission than with the Stationery Office publications, which include the above reports. From this point of view, the publication of the *Questionnaire* prepared by the Permanent Mandates Commission, together with the replies of the Mandatory from 1923 onwards, is to be welcomed.

of the League of Nations in connection with mandates, and that this situation gives rise to practical difficulties.' ¹

The suggestion was consequently made by the Commission

'that the mandatory Powers be requested to consider the expediency of circulating the documents of the League of Nations relating to the mandate system—in particular the report and minutes of the Mandates Commission—to all officials in mandated territories whom these documents may concern.' ²

With the setting up of a civil administration in Palestine (July 1920) the mandate in draft form, as it then was, became the guiding instrument of the Mandatory.³ The Permanent Mandates Commission, however, thought it advisable not to examine the reports of the then prospective Mandatory before the legal entry into force of the mandate. This, as we have seen, took place only on September 29, 1923, simultaneously for Palestine and Syria, and as the reports are 'annual,' the Commission seems to have been of the opinion that their examination was to cover not less than one full year from that date. It is only since then that the Mandatory has become legally responsible to the League. This is why no examination

¹ *P.M.C.*, Minutes of 6th Session, p. 173. As an illustration of what the Commission would undoubtedly consider as 'imperfect acquaintance' with the mandates system, one may mention a comparatively recent statement reported to have been made by the Governor of Tanganyika territory to the effect that 'Tanganyika is a part of the British Empire and will remain so' (*The Times*, Jan. 15, 1927). Besides being legally unfounded, such statements are likely to have an undesirable effect, and it is clearly the duty of the Mandatory to prevent any possibility of their ever being made.

² *P.M.C.*, Minutes of 6th Session, p. 173.

³ Speaking of the administration of mandated territories during the period which preceded the ratification of the mandates by the Council of the League, Sir F. D. (now Lord) Lugard points out that the draft mandates were not 'made known to the officers charged with the task of administration' (*The Dual Mandate in British Tropical Africa*, p. 51). If this was also the case in Palestine, it may partly explain the tension which existed at the time between the military authorities and various sections of the local population.

of the Mandatory's reports took place at the fourth session of the Permanent Mandates Commission, held in June and July 1924, *i.e.* after, but less than a year from, the coming into force of the mandate. The Commission, however, availed itself of the presence of the British accredited representative¹ to obtain certain information on the administration of Palestine. The information chiefly consisted of a statement outlining the general policy pursued by the Mandatory, particularly in connection with the dual aspect of the mandate.

According to the wish expressed by the Chairman of the Permanent Mandates Commission that Governors of mandated territories would come to Geneva in connection with the examination of the respective reports, the High Commissioner for Palestine was accredited to the Permanent Mandates Commission when the report on the administration of Palestine was to be examined for the first time. This took place at the fifth (extraordinary) session, held in October-November 1924. It was at that session, as we have seen, that the Permanent Mandates Commission took the opportunity of giving a general interpretation to the mandate for Palestine. In its observations the Commission seems to have been primarily concerned with the 'acute controversy,' the 'divergencies' and the 'conflict of interests' which had arisen out of the dual aspect of the mandate, and while not criticizing the terms of the mandate itself—which would have been outside its competence—it gave the impression of having been under some vague apprehension lest certain provisions of the mandate might not prove workable in their present form. As an illustration of the impression created by the above observations, it

¹ Mr. Ormsby-Gore, who, in his own words, 'was very specially interested in Palestine, since he had been a political officer there before the Armistice, and had also been at the Peace Conference in connec-

tion with Palestine, and had been until January of this year partly responsible for the Palestine Government as Under-Secretary of State for the Colonies' (*P.M.C.*, Minutes of 4th Session, p. 87).

may be mentioned that in answer to a remark¹ that 'the Commission ought not to appear to question the mandate based partly on the Balfour Declaration,' the Chairman found it necessary to state that 'it was in this sense that the observations made by the Commission in the previous year [fifth session] should be interpreted.'² This impression, however, seems to have been dispelled by the observations of the Commission at its seventh session (October 1925), when for the second time it dealt with the Mandatory's report on the administration of Palestine. While in 1924 the opposition in Palestine to the mandate—though never excused or justified—was at least intelligible to the Commission, it was clearly deprecated in 1925, especially when it took the form of 'political agitation.' In its general observations the Commission had unequivocally stated that

'the essential principles embodied in the mandate, the observance of which is the sole care of the Mandates Commission, provide the only substantial basis for the economic and political development of the country.'³

Distinction between Legitimate and Illegitimate Petitions.—The same attitude was adopted by the Permanent Mandates Commission with regard to petitions concerning the administration of Palestine. In this respect the Commission has applied to Palestine the fundamental principle that all petitions—whether they emanate from inhabitants of the mandated territory or from any other source—which criticize or protest against the terms of the mandate itself are outside its competence. After the establishment of the right of petition a distinction was made between what were

¹ Made by M. Rappard, formerly chief of the Mandates Section at the Secretariat of the League.

² *P.M.C.*, Minutes of 7th Session, p. 127.

³ *Ibid.*, p. 212.

sometimes called 'legitimate' and 'illegitimate' petitions, the first complaining against the administration of the Mandatory on the ground that it violates, or does not comply with, the terms of the mandate concerned, the other being complaints or protests against the terms of the mandate itself. This distinction has always been observed by the Permanent Mandates Commission with regard to the various mandates, but some of the most striking illustrations of it have been provided by petitions relating to Palestine. Thus at its fourth session the Commission had before it a petition from the Executive Committee of the Syro-Palestinian Congress ¹ in which the petitioners protested against the terms of the mandates for Syria and Palestine; thus again, at the fifth session, a petition was submitted to the Commission by the Executive Committee of the Palestine Arab Congress, partly following the general lines of the previous one. Those petitions drew the following observation from the Permanent Mandates Commission:

'As regards the protests of the petitioners against the terms of the mandate itself, and more especially as regards the desire for the establishment in Palestine of a fundamentally different *régime* from that of the mandate at present in force, the Commission, considering that its task is confined to supervising the execution of the mandate in the terms prescribed by the Council, is of opinion that it is not competent to discuss the matter.'²

Another petition of a similar character reached the Permanent Mandates Commission at its seventh session, from the same source, but 'in view of the fact that . . .

¹ This petition has been classified among those emanating from sources other than the inhabitants themselves, on account, as it seems, of its having been sent from Egypt. It may be pointed out that no provision deals with cases in which

petitions are sent from outside mandated territories with the sole object of avoiding the procedure regarding petitions from the territories themselves.

² *P.M.C.*, Minutes of 5th Session, p. 196.

the very principle of the Palestine mandate was contested, the Commission has decided not to take it into consideration.' ¹

As illustrations of the other category of petitions may be mentioned the various communications from the Zionist Organization, whose main object was to secure the effective application of Article 6 of the mandate, and the petition from the *Ashkenasic* Jewish community,² which, as we have seen, was based on the various provisions of the mandate safeguarding the civil and religious rights of the inhabitants. To this category of what has been termed 'legitimate' petitions belongs also the second communication submitted by the Executive Committee of the Palestine Arab Congress at the seventh session of the Permanent Mandates Commission. Unlike the previous petitions emanating from the same source, this communication contained a series of definite complaints against the administration of the Mandatory. But

'in spite of the very numerous allegations made and the information contained in this petition and in the report and comments of the mandatory Power, and in spite of the supplementary information given by the accredited representative, the Commission has not been able to reach a unanimous and final decision concerning the numerous questions raised.' ³

It has, indeed, been pointed out that 'the Commission

¹ *P.M.C.*, Minutes of 7th Session, p. 219.

² Although submitted in time for the sixth session of the Permanent Mandates Commission, the petition was dealt with only at the seventh session, in connection with the Mandatory's report on Palestine. Without establishing a definite rule, the Commission has constantly followed the practice of examining petitions from, or relating to, any given mandated territory at the same time as

the Mandatory's report for the territory in question. Thus the report, the petitions and the Mandatory's observations to the latter—if any—are subject to one general and thorough examination by the Permanent Mandates Commission, which, in addition, can avail itself of the presence of the accredited representative of the Mandatory to obtain such information as it may desire.

³ *P.M.C.*, Minutes of 7th Session, p. 219.

doubts whether it can make any adequate recommendation on so complex and delicate a subject on the sole basis of written documents.’¹

The Right of ‘Visit’ and the Hearing of Petitioners by the Permanent Mandates Commission.—The last sentence is a direct allusion to an important question which has arisen in connection with the above communication. The Permanent Mandates Commission was actually invited by the petitioners to visit Palestine ‘in order to examine the complaints on the spot in the presence of the parties concerned,’² and the *rapporteur* has favourably commented upon this suggestion. It was obvious, however, that the Commission could not discuss the question of a visit to Palestine alone without hurting the susceptibilities of the Mandatory, and the Chairman rightly emphasized that this was a ‘general question of principle.’³ We have seen on various occasions that the tendency shown by the Permanent Mandates Commission from the very beginning was to interpret its duties in the largest spirit compatible with the obligations assumed by the Mandatories on the one hand and the underlying principles of the mandates system on the other. True, the Commission is only an advisory body, but it has been given wide powers of investigation which do not necessarily cease with the examination of reports and petitions. The mandates system is in its very essence one of continual evolution, and when the Permanent Mandates Commission arrives at the conclusion that the means of investigation placed at its disposal are inadequate to enable it to express its opinion on a given point, it is not only its right but its duty to ask for an extension of these means in order that it may be in a position conscientiously to fulfil its advisory duties to the Council.

¹ *P. M. C.*, Minutes of 7th Session, p. 219.

² *Ibid.*, p. 180.

³ *Ibid.*, p. 124.

This seems to be the position in theory, but it was with a practical issue that the Permanent Mandates Commission was faced, and 'it was to be feared,' said the Vice-Chairman of the Commission, 'that the arguments in the present instance were mainly unfavourable.'¹ For what was really involved in this question, as far as Palestine was concerned, was not an enquiry limited to one or more particular points in the administration but a sort of general investigation of the Mandatory's policy which was contemplated by those who proposed or favoured the 'visit.' This word has been carefully chosen, and not 'enquiry,' in order mainly to allay the susceptibilities of the Mandatory, but the fact remained that a general enquiry was envisaged. There should have been no misapprehension, however, on this point: the enquiry was merely intended to ascertain how far the terms of the mandate were being carried out by the Mandatory both in their spirit and letter; it was not contemplated by any member of the Commission to question the mandate itself, and from this point of view, as the *rapporteur* pointed out, 'it seemed that the Commission might be of obvious assistance to the mandatory Power, for it would show the Arabs a way in which they might accept the principle of the mandate.'²

On the other hand, it was urged that the proposed visit of the Commission 'would inevitably give rise in Palestine to an explosion of feeling on the part of all those who were dissatisfied with the administration of the mandatory Power,'³ and the experience gained from the visit of the American Commission in 1919⁴ seems to justify such an apprehension. It was also maintained that the proposal was impracticable on the ground that

'no mandatory Power could accept such a procedure.

¹ *Ibid.*

² *Ibid.*, p. 127.

³ *Ibid.*

⁴ See *supra*, Introductory, p. 17.

Its prestige would inevitably suffer, for the Commission or sub-committee would be in the position of a court of enquiry in which the mandatory Power was the defendant.¹

Admitting, as many undoubtedly do, that in principle it is desirable that the Permanent Mandates Commission should be accorded a right to visit mandated territories in order to obtain on the spot such information as they may desire, it seems to have been somewhat unfortunate that the suggestion to that effect should have come from the very source which proved to be opposed to the mandate for one of these territories, namely Palestine. The proposal would have had a far greater chance of success had it originated in another source such as the Council of the League acting on the advice of the Permanent Mandates Commission or one of the Mandatories themselves.² The susceptibilities of the mandatory Powers on the one hand, and their prestige on the other, would have thus been largely safeguarded, since the contemplated visits could hardly have been considered as directed against any particular Mandatory.³ Now that the question has already been

¹ *P.M.C.*, Minutes of 7th Session, p. 124.

² In this connection it may be pointed out that it is to the initiative of a mandatory Power, namely Great Britain, that the incorporation of the right of petition in the mandates system is mainly due.

³ The visits could have formed part of the ordinary routine of the Permanent Mandates Commission, somewhat on the following lines:

'La Commission Permanente des Mandats partagerait sa besogne d'inspection entre ses propres membres, en les désignant respectivement comme rapporteurs, pour les divers territoires sous mandat. Il serait désirable que le Conseil ratifiât ces désignations, car la nationalité et les opinions personnelles des candidats peuvent faire l'objet de pour-

parlers diplomatiques, au sujet desquels la Commission Permanente des Mandats n'est pas compétente. Il faut, en effet, que le candidat se rendant au territoire sous mandat soit, en quelque sorte, *persona grata* auprès du gouvernement du Mandataire, et jouisse de la pleine confiance de celui-ci. Le candidat ainsi désigné aura un ou plusieurs territoires contigus à visiter; il examinera sur place la situation générale du territoire, s'entourera de toute information utile, qu'elle vienne du Mandataire ou d'une autre source, et présentera son rapport à la Commission Permanente des Mandats lors de sa session annuelle ordinaire. Il y aura ainsi, pour chaque territoire sous mandat, deux rapports: l'un du Mandataire, l'autre du rapporteur-inspecteur, membre de la Commission

broached—though with unfavourable results so far—it is to be hoped that the Commission will find its way to a satisfactory solution. In the meantime, owing to divergency of opinions within the Commission itself, the final decision was postponed and no recommendation was made to the Council; that is where the matter now rests. It may be pointed out, however, that the more those petitioners who originally suggested the visit limit their grievances to definitely specified acts or omissions alleged against the Mandatory, and the less disposition they show to blame the Mandatory's administration as a whole, the easier it will be for the Permanent Mandates Commission to adopt a favourable attitude towards the proposal.

As things stand now, it seems unlikely, however, that the proposal will meet with the approval of the mandatory Powers, if inference may be drawn from their attitude towards the cognate matter of the hearing of petitioners by the Permanent Mandates Commission. In regard to this question the members of the Commission were sufficiently in agreement to enable the following observation to be made:

'The Commission has again carefully considered the procedure in force with regard to petitions. Experience having shown that sometimes the Commission has been unable to form a definite opinion as to whether certain petitions are well founded or not, the Commission is of opinion that in these cases it might appear indispensable to allow the petitioners to be heard by it. The Commission, however, would not desire to formulate a definite recommendation on this subject before being informed of the views of the Council.'¹

This observation has been characterized by the British

Permanente des Mandats. C'est sur ces deux rapports que sera basé l'avis que la Commission doit donner au Conseil' (J. Stoyanovsky, *op. cit.*,

pp. 154-155).

¹ P.M.C., Minutes of 9th Session, p. 216.

Government, acting in consultation with the Dominions, as 'based on a misconception of the duties and responsibilities of the Commission and the Council' and as 'an incorrect and dangerous application of the theory' that 'petitioners should have a means of making their grievances known.'¹ The argument that 'no such difficulty' as the one pointed out by the Permanent Mandates Commission 'has been experienced in the Colonial Office'² seems, however, rather to strengthen the opinion that colonial possessions essentially differ in this respect from mandated territories than to support the contention of the British Government. The Colonial Secretary, indeed, is in possession of more direct and personal knowledge of the administration set up in colonial possessions than is the Permanent Mandates Commission in the case of mandated territories. Although the *rapporteur* of the Council of the League was favourable to the suggestion of the Permanent Mandates Commission, it was decided to refer the matter to the mandatory Governments in order to obtain their views. As these seem to be unanimous in opposing the suggestion, it is unlikely, for the present at least, that the Commission will be accorded the right to hear petitioners from or on behalf of mandated territories. It may, however, be pointed out that a distinction was drawn by the British representative on the Council between the various categories of mandates, and that in his opinion it is with regard to territories under C mandates that '*prima facie* it would be in the highest degree inexpedient to admit to the Mandates Commission petitioners coming from these territories.'³ Should this distinction be agreed to by the other mandatory Powers

¹ Papers respecting the Work of the Permanent Mandates Commission, *Cmd.* 2767 (1926), pp. 15-16.

² *Ibid.*, p. 16.

³ Report by the British Representative on the 41st and 42nd Sessions of the Council of the League, *Cmd.* 2761 (1926), p. 6.

and the Council of the League, the functions of the Permanent Mandates Commission may, after all, be partially extended. The first territories to benefit from such extension would probably be those of the A category, including Palestine.

CONCLUSION

TERMINATION OF THE MANDATE

THE last obligation assumed by the Mandatory is connected with the termination of the mandate, which is to remain in force until such time as the local community is able 'to stand alone.' No provision which might clearly define the Mandatory's obligations is to be found either in Article XXII of the Covenant or in the mandate itself. Only indirect and incidental reference is made in the mandate to the question of its termination: once, in stating that interested Powers have reserved for themselves the right to re-establish in Palestine the capitulatory *régime* 'at the expiration of the mandate' (Article 8, paragraph 2); and again, in connection with the provision safeguarding the rights secured by Articles 13 and 14 and the financial obligations of the Government of Palestine 'in the event of the termination of the mandate' (Article 28). There seems, however, to be no doubt that the Mandatory is under obligation, however vague and ill-defined, to see that the mandate is terminated as soon as its *raison d'être* no more exists. Such obligation, indeed, is inherent in the mandates system as a whole, and as far as the ex-Turkish provinces at least are concerned, there is on this point something like universal agreement, apparently based on the wording of Article XXII, paragraph 4 of the Covenant, which explicitly refers to the provisional character of the mandates in

question.¹ Moreover, it is maintained and generally admitted by the Mandatories that their obligation does not consist in merely awaiting the proper time for the termination of the mandate, but in actively assisting the local population towards such speedy attainment of self-government as conditions may permit. The decision as to the opportunity of terminating the mandate is of necessity to be left with the Mandatory, acting under the supervision of the League. It is the Mandatory, and he alone, who is in a position to take the initiative in this matter, and there can be no valid objection, legal or other, to the recognition of this prerogative as belonging to him if the mandates system is to continue to be based on confidence and not on suspicion. There seems to be no reason why a State that has been trusted with the initiation of the mandatory *régime* in a given territory should not equally be trusted with its termination. If, however, for some reason or other, any such State should be reluctant to relinquish its control over a mandated territory and unduly delay the termination of the mandate, the Council of the League would then be called upon to take such steps as it might deem advisable to secure full execution of the mandatory trust.²

The question whether mandates are revocable, and if so in what circumstances, is still one of the most controversial questions of the mandates system, but if the system is not to prove a sham, it may be safely said that the Council would be fully justified in revoking any

¹ A good deal of controversy has quite recently arisen with regard to the terminability of the B mandates. Without entering into the details, it may be pointed out that the provisional—which does not necessarily mean uncertain—character of the mandates in general is clearly stated in the first paragraph of Art. XXII, which provides for the

application of the mandates system to territories inhabited by peoples 'not yet able to stand alone.' But this by the way.

² According to Fauchille, the fate of any given mandated territory is to be decided by the Council of the League (*op. cit.*, tome i. 2^{ème} partie, p. 883).

mandate the termination of which is unduly delayed by the Mandatory. A mandate is terminable or it ceases to be a mandate, and whatever may be said to the contrary will undoubtedly fail to convince those who are still so ingenuous as to believe that the inauguration of the mandates system has marked a profound breach with old colonial conceptions. Some time must elapse, however, before the new principles as embodied in the mandates system are fully substituted for the old. To achieve this end is one of the tasks undertaken by the League of Nations through its Permanent Mandates Commission.

As far as the A mandates are concerned, the above question is purely of theoretical importance, as no jurist or responsible statesman has ever suggested anything inconsistent with the terminable character of these mandates.¹ Moreover, there may be said to be a precedent with regard to the ex-Turkish provinces in the case of the Iraq mandate, where not only its terminability but its very termination within a limited number of years has definitely been laid down. On the other hand, the mandate for Syria contains an indication of a time limit, not for its termination but for the framing of an Organic Law which *inter alia* 'shall contain provisions designed to facilitate the progressive development of Syria as an independent State' (Article 1). In this respect as in many others, the mandate for Palestine stands alone, not that its terminable character has ever been in doubt, but that the time of its termination could not even approximately be foreseen, the reason being the very same which constitutes the peculiar character of this mandate. Indeed, before relinquishing his control over Palestine, the Mandatory is to be satisfied, not only that the local population as a whole is

¹ Fauchille uses the term '*extinction*' in connection with the mandates of the A category (*ibid.*).

'able to stand alone,' but also that the establishment of the Jewish national home has been secured. It has sometimes been remarked that the *rôle* of Great Britain in Palestine is both that of a Mandatory in the strict sense of this term and of an Administrator for an absent people. It is therefore well-nigh impossible to estimate the duration of the Palestine mandate, as it depends on a variety of elements—far more numerous than in the case of the other A mandates—which are not within the control of the Mandatory. No more is it possible to foresee the ultimate form of independence in which the Palestine mandate will result; but in so far as inference may be drawn from the general tendency of the development which is actually taking place, Palestine seems to be growing into a bi-national State, with the Arab and Jewish communities as its two national elements. Some doubts have been—and to a certain extent still are—entertained as to whether this was the original intention of the authors of the mandate. Thus it has been maintained that the Mandatory's obligation is to make Palestine into a State with only one national element and—as a concession to the facts of the situation on the one hand and to new international ideas on the other—a 'minority' whose protection should be internationally guaranteed. Opinions as to what part of the population of Palestine should constitute the national element of the State and what part the protected minority not unnaturally depend on the national or racial allegiance and sympathies of those who adopt this view. The Mandatory's interpretation of the ultimate purpose of the mandate, however, seems to be quite different, and in this he has the full support of the Permanent Mandates Commission, whose beneficial and moderating influence, although not always apparent, is nevertheless largely determining.

As far as Palestine at least is concerned, it can hardly

be said—though it sometimes is—that effective supervision by the Permanent Mandates Commission adds to the difficulties of the Mandatory in carrying out his trust. The proceedings of the Permanent Mandates Commission contain ample illustration of the fact that the Mandatory's *role* in Palestine is, on the whole, rendered far easier thanks to the moral support of the Commission extended to all acts and measures of the Mandatory as are in their opinion calculated to further the ultimate ends of the mandate. If the Mandatory has succeeded, as he undoubtedly has, in bringing the various communities in Palestine nearer to each other and making future co-operation between them much more probable than could at one time have been reasonably anticipated, his success is largely due to the intervention of the Permanent Mandates Commission and its influence as an institution of the League on world public opinion and on such local public opinion as is gradually developing in Palestine. As compared with the other two mandates of the A category, the mandate for Palestine is the one in connection with which the greatest amount of co-operation and mutual confidence has been established between the Mandatory and the Permanent Mandates Commission. This stands to the credit of both. The fact that both see eye to eye with regard to the fundamental issues involved in the Palestine mandate should greatly help to overcome all such difficulties as are connected with the peculiar nature of the mandate, and thus shorten its duration, and ultimately bring Palestine, united and independent, into the family of nations as a Member of the League.

ANNEXE I

THE MANDATE FOR PALESTINE *

The Council of the League of Nations :

Whereas the Principal Allied Powers have agreed, for the purpose of giving effect to the provisions of Article 22 of the Covenant of the League of Nations, to entrust to a Mandatory selected by the said Powers the administration of the territory of Palestine, which formerly belonged to the Turkish Empire, within such boundaries as may be fixed by them ; and

Whereas the Principal Allied Powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on November 2nd, 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country ; and

Whereas recognition has thereby been given to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country ; and

Whereas the Principal Allied Powers have selected His Britannic Majesty as the Mandatory for Palestine ; and

Whereas the mandate in respect of Palestine has been formulated in the following terms and submitted to the Council of the League for approval ; and

Whereas His Britannic Majesty has accepted the mandate in respect of Palestine and undertaken to exercise it on behalf of the League of Nations in conformity with the following provisions ; and

Whereas by the afore-mentioned Article 22 (paragraph 8), it is provided that the degree of authority, control or administration to be exercised by the Mandatory, not having been previously agreed upon by the Members of the League, shall be explicitly defined by the Council of the League of Nations ;

Confirming the said mandate, defines its terms as follows :

Article 1.

The Mandatory shall have full powers of legislation and of administration, save as they may be limited by the terms of this mandate.

* Reproduced from *Cmd. 1785* (1922), by the kind permission of the Controller of H.M. Stationery Office.

Article 2.

The Mandatory shall be responsible for placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home, as laid down in the preamble, and the development of self-governing institutions, and also for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion.

Article 3.

The Mandatory shall, so far as circumstances permit, encourage local autonomy.

Article 4.

An appropriate Jewish agency shall be recognised as a public body for the purpose of advising and co-operating with the Administration of Palestine in such economic, social and other matters as may affect the establishment of the Jewish national home and the interests of the Jewish population in Palestine, and, subject always to the control of the Administration, to assist and take part in the development of the country.

The Zionist organisation, so long as its organisation and constitution are in the opinion of the Mandatory appropriate, shall be recognised as such agency. It shall take steps in consultation with His Britannic Majesty's Government to secure the co-operation of all Jews who are willing to assist in the establishment of the Jewish national home.

Article 5.

The Mandatory shall be responsible for seeing that no Palestine territory shall be ceded or leased to, or in any way placed under the control of, the Government of any foreign Power.

Article 6.

The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage, in co-operation with the Jewish agency referred to in Article 4, close settlement by Jews on the land, including State lands and waste lands not required for public purposes.

Article 7.

The Administration of Palestine shall be responsible for enacting a nationality law. There shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine.

Article 8.

The privileges and immunities of foreigners, including the benefits of consular jurisdiction and protection as formerly enjoyed by Capitulation or usage in the Ottoman Empire, shall not be applicable in Palestine.

Unless the Powers whose nationals enjoyed the afore-mentioned privileges and immunities on August 1st, 1914, shall have previously renounced the right to their re-establishment, or shall have agreed to their non-application for a specified period, these privileges and immunities shall, at the expiration of the mandate, be immediately re-established in their entirety or with such modifications as may have been agreed upon between the Powers concerned.

Article 9.

The Mandatory shall be responsible for seeing that the judicial system established in Palestine shall assure to foreigners, as well as to natives, a complete guarantee of their rights.

Respect for the personal status of the various peoples and communities and for their religious interests shall be fully guaranteed. In particular, the control and administration of Wakfs shall be exercised in accordance with religious law and the dispositions of the founders.

Article 10.

Pending the making of special extradition agreements relating to Palestine, the extradition treaties in force between the Mandatory and other foreign Powers shall apply to Palestine.

Article 11.

The Administration of Palestine shall take all necessary measures to safeguard the interests of the community in connection with the development of the country, and, subject to any international obligations accepted by the Mandatory, shall have full power to provide for public ownership or control of any of the natural resources of the country or of the public works, services and utilities established or to be established therein. It shall introduce a land system appropriate to the needs of the country, having regard, among other things, to the desirability of promoting the close settlement and intensive cultivation of the land.

The Administration may arrange with the Jewish agency mentioned in Article 4 to construct or operate, upon fair and equitable terms, any public works, services and utilities, and to develop any of the natural resources of the country, in so far as these matters are not directly undertaken by the Administration. Any such arrangements shall provide that no profits dis-

tributed by such agency, directly or indirectly, shall exceed a reasonable rate of interest on the capital, and any further profits shall be utilised by it for the benefit of the country in a manner approved by the Administration.

Article 12.

The Mandatory shall be entrusted with the control of the foreign relations of Palestine and the right to issue exequaturs to consuls appointed by foreign Powers. He shall also be entitled to afford diplomatic and consular protection to citizens of Palestine when outside its territorial limits.

Article 13.

All responsibility in connection with the Holy Places and religious buildings or sites in Palestine, including that of preserving existing rights and of securing free access to the Holy Places, religious buildings and sites and the free exercise of worship, while ensuring the requirements of public order and decorum, is assumed by the Mandatory, who shall be responsible solely to the League of Nations in all matters connected herewith, provided that nothing in this article shall prevent the Mandatory from entering into such arrangements as he may deem reasonable with the Administration for the purpose of carrying the provisions of this article into effect; and provided also that nothing in this mandate shall be construed as conferring upon the Mandatory authority to interfere with the fabric or the management of purely Moslem sacred shrines, the immunities of which are guaranteed.

Article 14.

A special Commission shall be appointed by the Mandatory to study, define and determine the rights and claims in connection with the Holy Places and the rights and claims relating to the different religious communities in Palestine. The method of nomination, the composition and the functions of this Commission shall be submitted to the Council of the League for its approval, and the Commission shall not be appointed or enter upon its functions without the approval of the Council.

Article 15.

The Mandatory shall see that complete freedom of conscience and the free exercise of all forms of worship, subject only to the maintenance of public order and morals, are ensured to all. No discrimination of any kind shall be made between the inhabitants of Palestine on the ground of race, religion or language. No person shall be excluded from Palestine on the sole ground of his religious belief.

The right of each community to maintain its own schools for the education of its own members in its own language, while conforming to such educational requirements of a general nature as the Administration may impose, shall not be denied or impaired.

Article 16.

The Mandatory shall be responsible for exercising such supervision over religious or eleemosynary bodies of all faiths in Palestine as may be required for the maintenance of public order and good government. Subject to such supervision, no measures shall be taken in Palestine to obstruct or interfere with the enterprise of such bodies or to discriminate against any representative or member of them on the ground of his religion or nationality.

Article 17.

The Administration of Palestine may organise on a voluntary basis the forces necessary for the preservation of peace and order, and also for the defence of the country, subject, however, to the supervision of the Mandatory, but shall not use them for purposes other than those above specified save with the consent of the Mandatory. Except for such purposes, no military, naval or air forces shall be raised or maintained by the Administration of Palestine.

Nothing in this article shall preclude the Administration of Palestine from contributing to the cost of the maintenance of the forces of the Mandatory in Palestine.

The Mandatory shall be entitled at all times to use the roads, railways and ports of Palestine for the movement of armed forces and the carriage of fuel and supplies.

Article 18.

The Mandatory shall see that there is no discrimination in Palestine against the nationals of any State Member of the League of Nations (including companies incorporated under its laws) as compared with those of the Mandatory or of any foreign State in matters concerning taxation, commerce or navigation, the exercise of industries or professions, or in the treatment of merchant vessels or civil aircraft. Similarly, there shall be no discrimination in Palestine against goods originating in or destined for any of the said States, and there shall be freedom of transit under equitable conditions across the mandated area.

Subject as aforesaid and to the other provisions of this mandate, the Administration of Palestine may, on the advice of the Mandatory, impose such taxes and customs duties as it may consider necessary, and take such steps as it may think best to promote the development of the natural resources of the country

and to safeguard the interests of the population. It may also, on the advice of the Mandatory, conclude a special customs agreement with any State the territory of which in 1914 was wholly included in Asiatic Turkey or Arabia.

Article 19.

The Mandatory shall adhere on behalf of the Administration of Palestine to any general international conventions already existing, or which may be concluded hereafter with the approval of the League of Nations, respecting the slave traffic, the traffic in arms and ammunition, or the traffic in drugs, or relating to commercial equality, freedom of transit and navigation, aerial navigation and postal, telegraphic and wireless communication or literary, artistic or industrial property.

Article 20.

The Mandatory shall co-operate on behalf of the Administration of Palestine, so far as religious, social and other conditions may permit, in the execution of any common policy adopted by the League of Nations for preventing and combating disease, including diseases of plants and animals.

Article 21.

The Mandatory shall secure the enactment within twelve months from this date, and shall ensure the execution of a Law of Antiquities based on the following rules. This law shall ensure equality of treatment in the matter of excavations and archaeological research to the nations of all States Members of the League of Nations.

(1) 'Antiquity' means any construction or any product of human activity earlier than the year A.D. 1700.

(2) The law for the protection of antiquities shall proceed by encouragement rather than by threat.

Any person who, having discovered an antiquity without being furnished with the authorisation referred to in paragraph 5, reports the same to an official of the competent Department, shall be rewarded according to the value of the discovery.

(3) No antiquity may be disposed of except to the competent Department, unless this Department renounces the acquisition of any such antiquity.

No antiquity may leave the country without an export licence from the said Department.

(4) Any person who maliciously or negligently destroys or damages an antiquity shall be liable to a penalty to be fixed.

(5) No clearing of ground or digging with the object of finding

antiquities shall be permitted, under penalty of fine, except to persons authorised by the competent Department.

(6) Equitable terms shall be fixed for expropriation, temporary or permanent, of lands which might be of historical or archaeological interest.

(7) Authorisation to excavate shall only be granted to persons who show sufficient guarantees of archaeological experience. The Administration of Palestine shall not, in granting these authorisations, act in such a way as to exclude scholars of any nation without good grounds.

(8) The proceeds of excavations may be divided between the excavator and the competent Department in a proportion fixed by that Department. If division seems impossible for scientific reasons, the excavator shall receive a fair indemnity in lieu of a part of the find.

Article 22.

English, Arabic and Hebrew shall be the official languages of Palestine. Any statement or inscription in Arabic on stamps or money in Palestine shall be repeated in Hebrew, and any statement or inscription in Hebrew shall be repeated in Arabic.

Article 23.

The Administration of Palestine shall recognise the holy days of the respective communities in Palestine as legal days of rest for the members of such communities.

Article 24.

The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council as to the measures taken during the year to carry out the provisions of the mandate. Copies of all laws and regulations promulgated or issued during the year shall be communicated with the report.

Article 25.

In the territories lying between the Jordan and the eastern boundary of Palestine as ultimately determined, the Mandatory shall be entitled, with the consent of the Council of the League of Nations, to postpone or withhold application of such provisions of this mandate as he may consider inapplicable to the existing local conditions, and to make such provision for the administration of the territories as he may consider suitable to those conditions, provided that no action shall be taken which is inconsistent with the provisions of Articles 15, 16 and 18.

Article 26.

The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations.

Article 27.

The consent of the Council of the League of Nations is required for any modification of the terms of this mandate.

Article 28.

In the event of the termination of the mandate hereby conferred upon the Mandatory, the Council of the League of Nations shall make such arrangements as may be deemed necessary for safeguarding in perpetuity, under guarantee of the League, the rights secured by Articles 13 and 14, and shall use its influence for securing, under the guarantee of the League, that the Government of Palestine will fully honour the financial obligations legitimately incurred by the Administration of Palestine during the period of the mandate, including the rights of public servants to pensions or gratuities.

The present instrument shall be deposited in original in the archives of the League of Nations and certified copies shall be forwarded by the Secretary-General of the League of Nations to all Members of the League.

Done at London the twenty-fourth day of July, one thousand nine hundred and twenty-two.

ANNEXE II

THE PALESTINE CONSTITUTION

I

PALESTINE ORDER IN COUNCIL, 1922.*

Whereas the Principal Allied Powers have agreed, for the purpose of giving effect to the provisions of Article 22 of the Covenant of the League of Nations, to entrust to a Mandatory selected by the said Powers the administration of the territory of Palestine, which formerly belonged to the Turkish Empire, within such boundaries as may be fixed by them ;

And whereas the Principal Allied Powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on November 2, 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country ;

And whereas the Principal Allied Powers have selected His Majesty as the Mandatory for Palestine ;

And whereas, by Treaty, capitulation, grant, usage, sufferance and other lawful means, His Majesty has power and jurisdiction within Palestine.

Now, therefore, His Majesty, by virtue and in exercise of the powers in this behalf by the Foreign Jurisdiction Act, 1890,¹ or otherwise, in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

PART I.

Preliminary.

1. This Order may be cited as ‘ The Palestine Order in Council, 1922.’ Title.

The limits of this Order are the territories to which the Mandate for Palestine applies, hereinafter described as Palestine.

2. In this Order the word :—

‘ Secretary of State ’ means one of His Majesty’s Principal Secretaries of State. Definitions.

* Dated August 10, 1922.

¹ 53-4 V. c. 37.

'The High Commissioner' shall include every person for the time being administering the Government of Palestine.

'Public Lands' means all lands in Palestine which are subject to the control of the Government of Palestine by virtue of Treaty, convention, agreement or succession, and all lands which are or shall be acquired for the public service or otherwise.

'The Mandate' means the Mandate for Palestine which was confirmed, and the terms of which were defined, by the Council of the League of Nations on the 24th day of July, 1922.

'The High Commissioner in Council' means the High Commissioner acting by and with the advice of the Executive Council.

'Gazette' means the Official Gazette of Palestine.

'Person' includes Corporation.

Words importing the plural or the singular may be construed as referring to one person or thing or to more than one person or thing, and words importing the masculine as referring to females (as the case may require).

3.—(i) Where this Order or any Ordinance confers a power or imposes a duty, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(ii) Where this Order or any Ordinance confers a power or imposes a duty on the holder of an office, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed by the holder of the office for the time being or by a person duly appointed to act for him.

(iii) Where this Order or any Ordinance confers a power to make rules, regulations or orders, then, unless a contrary intention appears, the power shall be construed as including a power exercisable in the like manner and subject to the like approval and conditions (if any) to rescind, revoke, amend or vary the rules, regulations or orders.

(iv) Expressions defined in this Order shall have the same respective meaning in any Ordinances, rules or regulations made under this Order, unless a contrary intention appears.

PART II.

Executive.

4. His Majesty may, by a Commission under His Sign Manual and Signet, appoint a fit person to administer the Government of Palestine under the designation of High Commissioner and

Interpreta-
tion.

Office of High
Commissioner.

Commander-in-Chief or such other designation as His Majesty thinks fit, and the person so appointed is hereinafter referred to as the High Commissioner.

5. The High Commissioner shall do and execute in due manner all things that shall belong to the said office, according to the tenour of any Orders in Council relating to Palestine and of such Commission as may be issued to him under His Majesty's Sign Manual and Signet, and according to such instructions as may from time to time be given to him, for the purpose of executing the provisions of the Mandate, under His Majesty's Sign Manual and Signet, or by Order of His Majesty in Council or by His Majesty through one of His Principal Secretaries of State, and to such laws and ordinances as are now or shall hereafter be in force in Palestine.

Powers of
High Com-
missioner.

6. Every person appointed to fill the Office of High Commissioner shall, with all due solemnity, before entering on any of the duties of his office, cause the Commission appointing him to be High Commissioner to be read and published in the presence of the Chief Justice, or if the Chief Justice is not able to attend, in the presence of such other of His Majesty's Officers in Palestine as can conveniently attend, which being done, he shall then and there take before him or them the Oath of Allegiance in the form provided by an Act passed in the Session holden in the Thirty-first and Thirty-second years of the Reign of Her Majesty Queen Victoria, entitled, 'An Act to amend the Law relating to Promissory Oaths,' and likewise the usual oaths for the due execution of the Office of High Commissioner and for the due and impartial administration of justice, which oaths the said Chief Justice, or some other of His Majesty's Officers then present, is hereby required to administer.

Publication of
High Com-
missioner's
Commission.

7. Whenever the office of High Commissioner is vacant or if the High Commissioner become incapable or be absent from Palestine, or be from any cause prevented from acting in the duties of his office, the person appointed to be Chief Secretary to the Government of Palestine, or if there be no such officer therein, or such officer be unable to act, then such person or persons as His Majesty may appoint under His Sign Manual and Signet and in default of such appointment the Senior Member of the Executive Council shall during His Majesty's pleasure administer the Government of Palestine, first taking the oaths hereinbefore directed to be taken by the High Commissioner and in the manner herein prescribed, which being done, the Chief Secretary or any other such Administrator as aforesaid is hereby authorised, empowered and commanded to do and execute during His Majesty's pleasure, all things that belong to the office of the High Commissioner according to the tenour of this

Succession to
Government.

Admini-
strator.

Oaths to be
taken by the
Admini-
strator.

Order, and according to His Majesty's Instructions as aforesaid, and the laws of Palestine.

Provided that the High Commissioner during his passage by sea from one part of Palestine to another, or when, in the exercise or discharge of any powers or duties by this Order in Council or otherwise conferred or imposed upon him, he is in any territories adjacent to or near to Palestine, shall not be considered to be absent from Palestine.

Appointment
of Deputy to
High Com-
missioner.

8. In the event of the High Commissioner having occasion at any time to be temporarily absent for a short period from the seat of Government, or, in the exercise or discharge of any powers or duties conferred or imposed upon him by His Majesty, or through one of His Majesty's Principal Secretaries of State, to visit any territories adjacent to or near to Palestine, he may by an instrument under the Public Seal of Palestine appoint the Chief Secretary, or if there be no such Officer or such Officer is absent or unable to act, then any other person to be his Deputy within any part of Palestine, during such temporary absence and in that capacity to exercise, perform and execute, for and on behalf of the High Commissioner during such absence but no longer, all such powers and authorities vested in the High Commissioner (except the power of pardon), as shall in and by such instrument be specified and limited, but no others. Every such Deputy shall conform to and observe all such instructions as the High Commissioner shall from time to time address to him for his guidance. Provided nevertheless that by the appointment of a Deputy as aforesaid the power and authority of the High Commissioner shall not be abridged, altered, or in any way affected otherwise than His Majesty may at anytime think proper to direct.

Public Seal.

9. The High Commissioner shall keep and use the Public Seal of Palestine for the sealing of all things whatsoever that shall pass the said Public Seal.

Executive
Council.

10. There shall be for the purpose of assisting the High Commissioner an Executive Council which shall be composed of such persons and constituted in such manner as may be directed by any instructions which may from time to time be addressed to the High Commissioner by His Majesty, under His Majesty's Sign Manual and Signet, and all such persons shall hold their places in the said Council during His Majesty's pleasure; and the said Executive Council shall observe such Rules in the conduct of business as may from time to time be contained in any such Instructions as aforesaid.

Definition of
boundaries,
formation of
districts, etc.

11. (1) The High Commissioner may, with the approval of a Secretary of State, by Proclamation divide Palestine into administrative divisions or districts in such manner and with such subdivisions as may be convenient for purposes of administration, describing the boundaries thereof and assigning names thereto.

(2) If a question arises whether any place is or is not within any administrative division or district, and such question does not appear to be determined by any such Proclamation or other evidence, it shall be referred to the High Commissioner, and a certificate under his hand and seal shall be conclusive on the question, and judicial notice shall be taken thereof.

12.—(1) All rights in or in relation to any public lands shall vest in and may be exercised by the High Commissioner for the time being in trust for the Government of Palestine. Public Lands.

(2) All mines and minerals of every kind and description whatsoever being in, under or on any land or water, whether the latter be inland rivers or seas or territorial waters, shall vest in the High Commissioner subject to any right subsisting at the date of this Order of any person to work such mines or minerals by virtue of a valid concession.

13. The High Commissioner may make grants or leases of any such public lands or mines or minerals or may permit such lands to be temporarily occupied on such terms or conditions as he may think fit subject to the provisions of any Ordinance. High Commissioner empowered to make grants of land.

Provided that such grant or disposition shall be in conformity either with some Order in Council or Law or Ordinance now or hereafter in force in Palestine, or with such instructions as may be addressed to the High Commissioner under His Majesty's Sign Manual and Signet, or through a Secretary of State, for the purposes of executing the provisions of the Mandate.

14. The High Commissioner may, subject to the direction of the Secretary of State, appoint or authorise the appointment of such public officers of the Government of Palestine under such designations as he may think fit, and may prescribe their duties ; and all such public officers, unless otherwise provided by law, shall hold their offices during the pleasure of the High Commissioner. Appointment of officers.

15. The High Commissioner may, subject to such instructions as may from time to time be given to him, upon sufficient cause to him appearing, dismiss or suspend from the exercise of his office any person holding any public office within Palestine, or, subject as aforesaid, may take such other disciplinary action as may seem to him desirable. Suspension of public officers.

16. When any crime or offence has been committed within Palestine, or for which the offender may be tried therein, the High Commissioner may, as he shall see occasion, grant a pardon to any accomplice in such crime or offence who shall give such information and evidence as shall lead to the conviction of the principal offender or of any such offenders if more than one ; and further may grant to any offender convicted of any crime or offence in any Court or before any Judge, or Magistrate, within Palestine a pardon, either free or subject to lawful conditions, Grant of pardon.

or any remission of the sentence passed on such offender, or any respite of the execution of such sentence, for such period as the High Commissioner thinks fit, and may, as he shall see occasion, remit any fines, penalties or forfeitures which may accrue or become payable in virtue of the judgment of any Court or Magistrate in Palestine.

Remission of
fines.

PART III.

Legislature.

17. From and after a date to be fixed by the High Commissioner in Executive Council by Proclamation in the Gazette, there shall be constituted a Legislative Council in and for Palestine as in this Order provided, which shall replace any Advisory Council then existing.

The powers of the High Commissioner now subsisting to pass Ordinances after consultation with the Advisory Council shall continue in force until the date of the election of members to the legislature hereby constituted.

18. The Legislative Council shall have full power and authority, without prejudice to the powers inherent in, or reserved by this Order to, His Majesty, and subject always to any conditions and limitations prescribed by any Instructions under the Sign Manual and Signet, to establish such Ordinances as may be necessary for the peace, order and good government of Palestine, provided that no Ordinance shall be passed which shall restrict complete freedom of conscience and the free exercise of all forms of worship, save in so far as is required for the maintenance of public order and morals; or which shall tend to discriminate in any way between the inhabitants of Palestine on the ground of race, religion or language.

No Ordinance shall be passed which shall be in any way repugnant to or inconsistent with the provisions of the Mandate.

19. The Legislative Council shall consist of 22 members in addition to the High Commissioner, of whom 10 shall be official members and 12 shall be unofficial members.

20. The official members of the Council shall be :—

The persons for the time being lawfully exercising the functions of the respective offices of: (a) Chief Secretary; (b) Attorney-General; (c) Treasurer; (d) Inspector-General of Police; (e) Director of Health; (f) Director of Public Works; (g) Director of Education; (h) Director of Agriculture; (i) Director of Customs; (j) Director of Commerce and Industry. Provided that if the High Commissioner is satisfied that any of the above persons is unable to attend a meeting of the Council he may summon in his

Legislative
Council.

Powers of
Legislative
Council.

Constitution
of
Legislative
Council.

Official
Members.

place such other person holding public office in the Government of Palestine as he thinks fit, and such person shall for the purposes of that meeting be deemed to be an official member of the Council.

21. The unofficial members of the Council shall be :--

Unofficial
Members.

Twelve persons to be elected in accordance with such Order in Council, Ordinance or other legislative enactment as may from time to time provide for elections to the Council.

22. The High Commissioner may at any time by Proclamation prorogue or dissolve the Council. The High Commissioner shall dissolve the Council at the expiration of three years from the date of the first meeting thereof.

Prorogation
and
Dissolution
of the
Council.

23. The first general election of members of the Legislative Council shall be held at such time not more than six months after the publication of this Order in the *Palestine Gazette*, and a general election shall be held at such time within three months after the dissolution of the Council as the High Commissioner shall by Proclamation appoint.

General
Elections to
be held.

24. No Ordinance shall take effect until either the High Commissioner shall have assented thereto and shall have signed the same in token of such assent, or until the assent of His Majesty thereto has been given by Order in Council or through a Secretary of State.

No
Ordinance to
take effect
until
assented to.

25. Subject to the provisions of the following Article, the High Commissioner may, according to his discretion and subject to any Instructions under the Sign Manual and Signet, declare that he assents to any Ordinance, or refuse his assent to the same.

Assent to
Ordinances.

26. The High Commissioner may reserve for the signification of the pleasure of His Majesty any Ordinance passed by the Legislative Council, and shall in any case so reserve any Ordinance which concerns matters dealt with specifically by the provisions of the Mandate.

Reserved
Ordinances.

An Ordinance so reserved shall take effect so soon as His Majesty has given his assent thereto either by Order in Council or through a Secretary of State, and the High Commissioner shall have signified such assent by notice in the Gazette.

27. His Majesty reserves to himself the right to disallow an Ordinance to which the High Commissioner has assented within one year of the date of the High Commissioner's assent thereto and to signify such disallowance through a Secretary of State. Every such disallowance shall take effect from the time when it shall be promulgated by the High Commissioner by notice in the Gazette.

Disallowance
of Ordinances.

28. No vote, resolution or Ordinance for the appropriation of any part of the public revenue, or for the imposition of any tax

Financial
Measures.

or impost, shall be proposed except by the High Commissioner, or by his direction.

President.

29. The High Commissioner, or in his absence the Chief Secretary, or, in the absence of both the High Commissioner and Chief Secretary, some Member elected by the Council, shall preside at the meetings thereof.

Quorum.

30. The Council shall not be disqualified from the transaction of business on account of any vacancies among the Members thereof, but it shall not be competent to proceed to the despatch of business unless ten Members be present.

Oath to be taken by Members of Legislature.

31. Every Member of the Legislative Council shall, before being permitted to sit or vote therein, take and subscribe the following oath before the President :—

‘I, A. B., do swear that I will be faithful and loyal to the Government of Palestine. So help me God.’

Provided that any person authorised to make a solemn affirmation or declaration instead of taking an Oath may make such affirmation or declaration in lieu of such Oath.

Questions to be decided by majority of votes.

32. All questions in the Legislative Council shall be determined by a majority of the votes of Members present, including the President, or presiding Member, who shall in addition have and exercise a casting vote in case of an equality of votes.

Standing Rules and Orders.

33. The Legislative Council in its first Session, and from time to time afterwards as there shall be occasion, shall adopt Standing Rules and Orders for the regulation and orderly conduct of its proceedings and the despatch of business, and for the passing, intituling and numbering of Ordinances and for the presentation of the same to the High Commissioner for his assent.

All such Rules and Orders shall be laid before the High Commissioner in Council, and being by him approved shall become binding and of force.

Privileges of Members.

34. It shall be lawful for the Council by Ordinance to define the privileges, immunities and powers to be held, enjoyed and exercised by the Council and the members thereof.

PART IV.

Application of Certain British Statutes.

35. The enactments in the First Schedule to the Foreign Jurisdiction Act, 1890, shall apply to Palestine, but subject to the provisions of this Order and to the exceptions, adaptations and modifications following, that is to say :—

- (i) The High Commissioner is hereby substituted for the Governor of a Colony or British Possession and the District Court is hereby substituted for a Superior

Foreign Jurisdiction Act, 1890.

Court or Supreme Court, and for a Magistrate or Justice of the Peace of a Colony or British Possession.

- (ii) For the portions of the Merchant Shipping Acts, 1854 and 1867,¹ referred to in the said Schedule, shall be substituted Part XIII of the Merchant Shipping Act, 1894.²
- (iii) In Section 51 of the Conveyancing (Scotland) Act, 1874,³ and any enactment for the time being in force amending the same the District Court is substituted for a Court of Probate in a Colony.
- (iv) With respect to the Fugitive Offenders Act, 1881⁴ :—
 - (a) So much of the 4th, and 5th, sections of the said Act as relates to sending a report of the issue of a warrant, together with the information, or a copy thereof, or to the sending of a certificate of committal and report of a case, or to the information to be given by a Magistrate to a fugitive, shall be excepted, and in lieu of such information the person acting as the Magistrate shall inform the fugitive that in the British Possession or Protectorate to which he may be conveyed he has the right to apply for a writ of *habeas corpus* or other like process.
 - (b) So much of the 6th section of the said Act as requires the expiration of fifteen days before issue of warrant shall be excepted.
 - (c) The High Commissioner shall not be bound to return a fugitive offender to a British Possession unless satisfied that the proceedings to obtain his return are taken with the consent of the Governor of that Possession.
 - (d) For the purposes of Part II of the said Act, Palestine, Cyprus, Egypt, the Ottoman Dominions, Persia and Iraq shall be treated as one group of British Possessions.

Provided that nothing in this Article contained shall be taken to extend to Palestine the enactments mentioned in the Schedule to the Foreign Jurisdiction Act, 1913, or any of them.

36. Where under the Merchant Shipping Act, 1894, or any amending Act, anything is authorised to be done by, to or before a British Consular officer, such thing may be done, in any place in Palestine, by, to or before such officer of the Government as the High Commissioner may appoint.

Acts done
under
Merchant
Shipping Act,
1894.

¹ 17-8 V. c. 104 and 30-1 V. c. 124.

² 57-8 V. c. 60.

³ 37-8 V. c. 94.

⁴ 44-5 V. c. 69.

Application of
Colonial
Prisoners'
Removal Act,
1884.

37. The Colonial Prisoners' Removal Act, 1884,¹ shall apply to and take effect within Palestine as if it were part of His Majesty's Dominions, subject as follows :—

The High Commissioner is hereby substituted for the Governor of a British Possession.

PART V.

Judiciary.

Civil Courts. 38. The Civil Courts hereinafter described shall, subject to the provisions of this part of the Order, exercise jurisdiction in all matters and over all persons in Palestine.

Class of
Courts.
Magistrates'
Courts.

39. Magistrates' Courts shall be established in each District and Sub-District as may be prescribed from time to time by Order under the hand of the High Commissioner. These Courts shall have the jurisdiction assigned to them by the Ottoman Magistrates Law of 1913, as amended by any subsequent law or Ordinance or Rules for the time being in force.

District
Courts.

40. District Courts shall be established in such Districts as may be prescribed from time to time by Order under the hand of the High Commissioner, and every such Court shall exercise jurisdiction :—

(1) As a Court of First Instance :—

(a) In all civil matters not within the jurisdiction of the Magistrates' Courts in and for that District.

(b) In all criminal matters which are not within the jurisdiction of the Court of Criminal Assize.

(2) As an Appellate Court from the said Magistrates' Courts subject to the provisions of any Ordinances or Rules.

Court of
Criminal
Assize.

41. There shall be a Court of Criminal Assize which shall have exclusive jurisdiction with regard to offences punishable with death and such jurisdiction with regard to other offences as may be prescribed by Ordinance.

Land Courts.

42. The High Commissioner may by Order establish Land Courts as may be required from time to time for the hearing of such questions concerning the title to immovable property as may be prescribed.

Supreme
Court.

43. There shall be established a Court to be called the Supreme Court of which the constitution shall be prescribed by Ordinance. The Supreme Court sitting as a Court of Appeal shall have jurisdiction subject to the provisions of any Ordinance to hear appeals from all judgments given by a District Court in first instance or by the Court of Criminal Assize or by a Land Court.

The Supreme Court, sitting as a High Court of Justice, shall

have jurisdiction to hear and determine such matters as are not causes or trials, but petitions or applications not within the jurisdiction of any other Court and necessary to be decided for the administration of justice.

44. In civil matters when the amount or value in dispute exceeds £E.500 an appeal shall lie from the Supreme Court to His Majesty in Council. Every appeal shall be brought within such time and in such manner as may be prescribed by any rules of procedure made by His Majesty in Council.

Appeal to
Privy Council.

45. The High Commissioner may by Order establish such separate Courts for the district of Beersheba and for such other tribal areas as he may think fit. Such Courts may apply tribal custom, so far as it is not repugnant to natural justice or morality.

Tribal Courts.

46. The jurisdiction of the Civil Courts shall be exercised in conformity with the Ottoman Law in force in Palestine on 1st November, 1914, and such later Ottoman Laws as have been or may be declared to be in force by Public Notice, and such Orders in Council, Ordinances and Regulations as are in force in Palestine at the date of the commencement of this Order, or may hereafter be applied or enacted; and subject thereto, and so far as the same shall not extend or apply, shall be exercised in conformity with the substance of the common law, and the doctrines of equity in force in England, and with the powers vested in and according to the procedure and practice observed by or before Courts of Justice and Justices of the Peace in England, according to their respective jurisdictions and authorities at that date, save in so far as the said powers, procedure and practice may have been or may hereafter be modified, amended or replaced by any other provisions. Provided always that the said common law and doctrines of equity shall be in force in Palestine so far only as the circumstances of Palestine and its inhabitants and the limits of His Majesty's jurisdiction permit and subject to such qualification as local circumstances render necessary.

Law to be
applied.

47. The Civil Courts shall further have jurisdiction, subject to the provisions contained in this Part of this Order, in matters of personal status as defined in Article 51 of persons in Palestine. Such jurisdiction shall be exercised in conformity with any law, Ordinances or Regulations that may hereafter be applied or enacted and subject thereto according to the personal law applicable.

Jurisdiction
in personal
status.

Where in any civil or criminal cause brought before the Civil Court a question of personal status incidentally arises, the determination of which is necessary for the purposes of the cause, the Civil Court may determine the question, and may to that end take the opinion, by such means as may seem most convenient, of a competent jurist having knowledge of the personal law applicable.

Confirmation
of death
sentences.

48. When any person has been sentenced to death, the Chief Justice shall transmit to the High Commissioner a copy of the evidence. The sentence shall not be carried into effect until confirmed by the High Commissioner.

Rules of
Court.

49. The Chief Justice may, with the approval of the High Commissioner, make rules for regulating the practice and procedure of the Supreme Court and of all other Civil Courts which are or may be established in Palestine.

Actions
against
Government.

50. No action shall be brought against the Government of Palestine or any Department thereof unless with the written consent of the High Commissioner previously obtained.

The Civil Courts shall not exercise any jurisdiction in any proceeding whatsoever over the High Commissioner or his official or other residence or his official or other property.

Religious
Courts.
Jurisdiction
of Religious
Courts.
Definition of
Personal
Status.

51. Subject to the provisions of Articles 64 to 67 inclusive jurisdiction in matters of personal status shall be exercised in accordance with the provisions of this Part by the Courts of the religious communities established and exercising jurisdiction at the date of this Order. For the purpose of these provisions matters of personal status mean suits regarding marriage or divorce, alimony, maintenance, guardianship, legitimation and adoption of minors, inhibition from dealing with property of persons who are legally incompetent, successions, wills and legacies, and the administration of the property of absent persons.

Moslem
Religious
Courts.

52. Moslem Religious Courts shall have exclusive jurisdiction in matters of personal status of Moslems in accordance with the provisions of the Law of Procedure of the Moslem Religious Courts of the 25th October, 1333, A.H., as amended by any Ordinance or Rules. They shall also have, subject to the provisions of any Ordinance or of the Order of the 20th December, 1921, establishing a Supreme Council for Moslem Religious Affairs, or of any Orders amending the same, exclusive jurisdiction in cases of the constitution or internal administration of a Wakf constituted for the benefit of Moslems before a Moslem Religious Court.

There shall be an appeal from the Court of the Qadi to the Moslem Religious Court of Appeal, whose decision shall be final.

Jewish
Religious
Courts.

53. The Rabbinical Courts of the Jewish Community shall have :—

- (i) Exclusive jurisdiction in matters of marriage and divorce, alimony and confirmation of wills of members of their community other than foreigners as defined in Article 59.
- (ii) Jurisdiction in any other matter of personal status of such persons, where all the parties to the action consent to their jurisdiction.

- (iii) Exclusive jurisdiction over any case as to the constitution or internal administration of a Wakf or religious endowment constituted before the Rabbinical Court according to Jewish Law.

54. The Courts of the several Christian communities shall have :— Christian Religious Courts.

- (i) Exclusive jurisdiction in matters of marriage and divorce, alimony, and confirmation of wills of members of their community other than foreigners as defined in Article 59.
- (ii) Jurisdiction in any other matters of personal status of such persons, where all the parties to the action consent to their jurisdiction.
- (iii) Exclusive jurisdiction over any case concerning the constitution or internal administration of a Wakf or religious endowment constituted before the Religious Court according to the religious law of the community, if such exists.

55. Where any action of personal status involves persons of different religious communities, application may be made by any party to the Chief Justice, who shall, with the assistance, if he thinks fit, of assessors from the communities concerned, decide which Court shall have jurisdiction. Whenever a question arises as to whether or not a case is one of personal status within the exclusive jurisdiction of a Religious Court, the matter shall be referred to a Special Tribunal of which the constitution shall be prescribed by Ordinance. Conflicts of Law and Jurisdiction.

56. The judgments of the Religious Courts shall be executed by the process and offices of the Civil Courts. Execution of judgments of Religious Courts.

57. Subject to the provisions of any Ordinance or Order establishing a Supreme Council for Moslem Religious Affairs, the constitution and jurisdiction of Religious Courts established at the date of this Order may be varied by Ordinance or Order of the High Commissioner. Change in composition of Religious Courts.

58. The Civil Courts shall exercise jurisdiction over foreigners, subject to the following provisions :— Jurisdiction over foreign subjects.

59. For the purpose of this part of the Order the expression 'foreigner' means any person who is a national or subject of a European or American State or of Japan, but shall not include : Definition of a 'foreigner.'

- (i) Native inhabitants of a territory protected by or administered under a Mandate granted to a European State.
- (ii) Ottoman subjects.
- (iii) Persons who have lost Ottoman nationality, and have not acquired any other nationality.

The term 'subject' or 'national' shall include corporations constituted under the law of a foreign State, and religious or

charitable bodies or institutions wholly or mainly composed of the subjects or citizens of such a State.

Right of
Foreigners to
claim trial by
British Magis-
trate and
other
privileges.

60. A foreigner accused of an offence punishable with imprisonment for a term exceeding *fifteen days*, or a fine exceeding £E.5, may claim to be tried by a British Magistrate. Any foreigner sentenced to imprisonment by a Palestinian Magistrate for an offence for which he cannot claim to be tried by a British Magistrate may appeal to the District Court.

61. A foreigner accused of an offence which is not triable by a Magistrate may claim that his interrogation during the preliminary investigation shall be undertaken, and the question of his release on bail and committal for trial shall be decided, by a British Magistrate.

A warrant of search of the house of a foreigner shall be issued only by a British Magistrate.

62. A foreigner committed by a Magistrate for trial before the District Court or the Court of Criminal Assize may claim that the Court shall contain a majority of British Judges.

63. In a civil case tried, whether in first instance or on appeal, by the District Court, a foreigner may claim that at least one member of the Court shall be a British Judge. In civil and criminal cases heard by the Supreme Court in its appellate capacity a foreigner may claim that the Court shall contain a majority of British Judges.

Matters of
personal
status.

64.—(i) Matters of personal status affecting foreigners other than Moslems shall be decided by the District Courts, which shall apply the personal law of the parties concerned in accordance with such regulations as may be made by the High Commissioner, provided always that the Courts shall have no jurisdiction to pronounce a decree of dissolution of marriage until an Ordinance is passed conferring such jurisdiction.

(ii) The personal law shall be the law of the nationality of the foreigner concerned unless that law imports the law of his domicile, in which case the latter shall be applied.

(iii) The District Court, in trying matters of personal status affecting foreigners, shall be constituted by the British President sitting alone. In trying matters of personal status affecting foreigners other than British subjects, the President may invite the Consul or a representative of the Consulate of the foreigner concerned to sit as an assessor for the purpose of advising upon the personal law concerned. In case of an appeal from a judgment in such a case the Consul or representative of the Consulate of the foreigner concerned shall be entitled to sit as an assessor in the Court of Appeal.

Right to
refer case to
Religious
Court.

65. Nothing in the preceding Article shall be construed to prevent foreigners from consenting to such matters being tried

by the Courts of the Religious Communities having jurisdiction in like matters affecting Palestinian citizens.

The Courts of the Religious Communities other than the Moslem Religious Courts shall not, however, have power to grant a decree of dissolution of marriage to a foreign subject.

66. Persons claiming to be treated as foreigners who do not in a criminal case make their claim on first appearance and in a civil case either on first appearance or in the first written pleading delivered to the Court, whichever be the earlier, shall forfeit their right so to claim. Nevertheless the claim may be made on appeal notwithstanding that it has not been made on first instance.

Claim to be
foreigner.

The burden of proof that they are entitled to be treated as foreigners shall be upon persons claiming the right aforesaid.

67. Notwithstanding anything in this Part of this Order, a Consul in Palestine may execute such non-contentious measures in relation to the personal status of nationals of his State as the High Commissioner, with the approval of the Secretary of State, may from time to time prescribe by regulation.

PART VI.

Removal and Deportation.

68. Where an offender convicted before any Court is sentenced to imprisonment, and the High Commissioner, proceeding under Section 7 of the Foreign Jurisdiction Act, 1890, authority in that behalf being hereby given to him, considers it expedient that the sentence should be carried into effect outside of Palestine, the place shall be a place in some part of His Majesty's Dominions out of the United Kingdom, the Government whereof consent that offenders may be sent thither under this Article.

Removal of
prisoners.

69.—(i) Where it is shown by evidence on oath, to the satisfaction of the High Commissioner, that any person is conducting himself so as to be dangerous to peace and good order in Palestine, or is endeavouring to excite enmity between the people of Palestine and the Mandatory, or is intriguing against the authority of the Mandatory in Palestine, the High Commissioner may, if he thinks fit, by Order under his hand and official seal order that person to be deported from Palestine to such place as the High Commissioner may direct.

Deportation of
political
offenders.

(ii) The place shall be a place in some part (if any) of His Majesty's Dominions to which the person belongs, or the Government of which consents to the reception of persons deported under this Order, or to some place under the protection of His Majesty or in the country out of His Majesty's Dominions to which that person belongs.

Appeal not to lie against deportation Order.

Penalty upon return, without permission, of deported person.

Proceedings upon deportation.

70. An appeal shall not lie against an Order of deportation made under this Order.

71.—(i) If any person deported under this Order returns to Palestine without the permission in writing of the High Commissioner (which permission the High Commissioner may give), he shall be deemed guilty of an offence, and liable on conviction to imprisonment for any period not exceeding three months with or without a fine not exceeding £E.50 ; and he shall also be liable to be again deported forthwith.

(ii) The High Commissioner, by Order under his hand and official seal, may vary or rescind any Order of deportation under this Order.

72.—(i) Where, under this Order, a person is to be removed or deported from Palestine he shall by warrant of the High Commissioner under his hand and seal be detained, if necessary, in custody or in prison until a fit opportunity for his removal or deportation occurs, and then, if he is to be deported beyond seas, be put on board one of His Majesty's vessels of war, or, if none be available, then on board some other British or other fit vessel.

(ii) The warrant of the High Commissioner shall be sufficient authority to the person to whom it is directed or delivered for execution, and to the commander or master of the vessel to receive and detain the person therein named, in the manner therein prescribed, and to remove and carry him to the place therein named, according to the warrant.

PART VII.

Validation of Ordinances, and Indemnification.

Validation of Ordinances, etc., issued by Military Administration.

73. The Proclamations, Ordinances, Orders, Rules of Court and other legislative acts made, issued or done by the Commander-in-Chief of the Egyptian Expeditionary Force, or by the Chief Administrator of Occupied Enemy Territory or by Military Governors in Palestine or any other officer of the Administration between October 1st, 1917, and June 30th, 1920, other than those set forth in the Schedule attached to this Order, shall be deemed to be and always to have been valid and of full effect both during the Military Occupation and after the termination thereof until repealed or superseded by the legislature established under this Order, notwithstanding that any such legislative act may have repealed or been inconsistent with the Law previously in force in Palestine ; provided that in the future application of all such Proclamations, Ordinances, Orders, Rules of Court and legislative acts the Government of Palestine shall be read for Occupied Enemy Territory Administration, High Commissioner for Chief Administrator, Governor of a District

for Military Governor, and a Civil Court of competent jurisdiction for a Military Court or Military Magistrate.

The Proclamations, Ordinances, Orders and Public Notices of the Military Administration which are set forth in the Schedule hereto are hereby cancelled and repealed, provided that any acts done thereunder before the passing of this Order shall be deemed to be and always to have been valid.

74. The Proclamations, Ordinances, Orders, Rules of Court and other legislative acts which have been issued or done by the High Commissioner or by any Department of the Government of Palestine on or after July 1st, 1920, shall be deemed to be and always to have been valid and of full effect and all acts done thereunder and all prohibitions contained therein shall be deemed to be valid.

Validation of
Ordinances
issued since
July 1920.

75. All actions, prosecutions and legal proceedings whatsoever, whether civil or criminal, which might be brought or instituted in any of the Courts of Palestine against the High Commissioner, or the officer for the time being commanding the forces of His Majesty, or any public officer of Palestine, or against any person acting under them, or under their instructions, or under the instructions of any of them respectively in any command or capacity military or civil, for, or on account of, or in respect of, any acts, matters and things whatsoever, in good faith advised, commanded, ordered, directed or done as necessary for the suppression of hostilities, or the establishment and maintenance of good order and government in Palestine, or for the public safety and welfare of Palestine, or for the execution of any regulations issued under Martial Law between the date of the British occupation and the date of the commencement of this Order, shall be discharged and become and be null and void.

Indemnity
for acts done
under
Martial Law.

Every such person as aforesaid by whom any such act, matter or thing shall have been advised, commanded, ordered, directed or done for any of the purposes aforesaid shall be freed, acquitted, discharged, released and indemnified against all and every person whomsoever in respect thereof.

76. Every such act, matter or thing referred to in the preceding Article shall be presumed to have been advised, commanded, ordered, directed or done as the case may be, in good faith until the contrary shall be proved by the party complaining.

Presumption
of good faith.

77. Any sentence passed, judgment given or order made by any Court Martial or Military Court constituted and convened by proper authority and under Martial Law, or pronounced by officers authorised to dispose of offences summarily under Martial Law, or passed, given or made by any Court established by the authority administering any part of Palestine in the occupation of His Majesty's Forces for the administration of justice within such territory, whether passed, given or made during such

Confirmation
of sentences.

occupation or after such occupation determined prior to the commencement of this Order, shall be deemed to be and always to have been valid, and to be and always to have been within the jurisdiction of the Court ; and the sentences of all persons tried by any such Court shall be deemed to be sentences passed by a duly and legally constituted Court of Palestine.

Confirmation
of orders of
deportation.

78. All persons in Palestine who have been deported without the limits thereof under and by virtue of any of the foregoing sentences referred to in the last Article, or by virtue of any other Order, shall be deemed to have been and to be legally deported without the limits of Palestine. Any person who, having been deported as aforesaid, returns to Palestine without the permission in writing of the High Commissioner shall be guilty of an offence and shall on conviction be liable to imprisonment for a term which may extend to two years and shall also be liable to fine and shall further be liable to be again deported.

Arrests, etc.,
under
Martial Law
validated.

79. All persons who have been in good faith and under proper authority during the existence of Martial Law arrested or detained, and all persons who have been similarly committed to gaol, and are there detained to await their trial, shall be deemed to have been lawfully arrested, committed to and detained in gaol.

Interpretation
of term
'proper autho-
rity.'

80. In all cases where any doubt arises whether any act, matter or thing alleged to have been commanded, ordered, directed or done under proper authority was done under such authority, it shall be lawful for the Chief Secretary for the time being to declare such act, matter or thing to have been commanded, ordered, directed or done under such authority, and such declaration, by any writing under the hand of the Chief Secretary, shall in all cases be conclusive evidence as to such authority.

PART VIII.

General.

Officers and
others to obey
High Com-
missioner.

81. All His Majesty's officers, Civil and Military, and all other inhabitants of Palestine are hereby required and commanded to be obedient, aiding and assisting unto the High Commissioner and to such person or persons as may from time to time, under the provisions of this Order, administer the Government of Palestine.

Official
languages.

82. All Ordinances, official notices and official forms of the Government and all official notices of local authorities and municipalities in areas to be prescribed by order of the High Commissioner, shall be published in English, Arabic and Hebrew. The three languages may be used in debates and discussions in the Legislative Council, and, subject to any regulations to be made from time to time, in the Government offices and the Law Courts.

83. All persons in Palestine shall enjoy full liberty of conscience, and the free exercise of their forms of worship subject only to the maintenance of public order and morals. Each religious community recognised by the Government shall enjoy autonomy for the internal affairs of the community subject to the provisions of any Ordinance or Order issued by the High Commissioner.

Freedom of
conscience.

84.—(i) The High Commissioner shall confer upon all matters relating to the regulation of immigration with a Committee consisting of not less than one-half of the unofficial members of the Legislative Council, and provision shall be made by Order in Council for investing the said Committee with all such powers and authorities and otherwise for the constitution and conduct of the business of the said Committee, as may be necessary to carry this Article into effect.

Immigration.

(ii) In the event of any difference of opinion between the High Commissioner and the said Committee upon any such matter as aforesaid, the High Commissioner shall make a full report on the subject to a Secretary of State, whose decision thereon shall be final.

85. If any religious community or considerable section of the population in Palestine complains that the terms of the Mandate are not being fulfilled by the Government of Palestine, it shall be entitled to present a Memorandum through a member of the Legislative Council to the High Commissioner. Any Memorandum so submitted shall be dealt with in such manner as may be prescribed by His Majesty in conformity with the procedure recommended by the Council of the League of Nations.

Petitions to
League of
Nations.

86. This Order in Council shall not apply to such parts of the territory comprised in Palestine to the East of the Jordan and the Dead Sea as shall be defined by order of the High Commissioner. Subject to the provisions of Article 25 of the Mandate, the High Commissioner may make such provision for the administration of any territories so defined as aforesaid as with the approval of the Secretary of State may be prescribed.

Power to
exclude
Territories
to East of
Jordan from
application of
any part of
Order.

87. The High Commissioner may by Proclamation in the Gazette at any time within one year from the date of the commencement of this Order, and provided he has previously obtained the approval of the Secretary of State, vary, annul or add to any of the provisions of this Order in order to carry out the purposes of the same, and may provide for any other matters necessary in order to carry into effect the provisions thereof.

Power to vary
this Order.

88. His Majesty, His heirs and successors in Council, may at any time revoke, alter or amend this Order.

Power re-
served to His
Majesty to
revoke, alter
or amend
present Order.

89. There shall be reserved to His Majesty, His heirs and successors, the right, with the advice of His or Their Privy

Power of
legislation,
etc., reserved
to the Crown.

Council, from time to time to make all such laws or ordinances as may appear to Him or Them necessary for the peace, order and good government of Palestine in accordance with the Mandate conferred on him.

Dates of
operation of
Order.

90. This Order shall commence and have effect as follows :—

- (i) As to the making of any warrant or appointment, and the issue of instructions, and as to any other provisions necessary for bringing this Order into effect, immediately from and after the date of this Order.
- (ii) As to all other matters and provisions comprised and contained in this Order, immediately after this Order has been published and proclaimed within Palestine, and the date of such publication shall be deemed to be the date of the commencement of this Order.¹

II

PALESTINE (AMENDMENT) ORDER IN COUNCIL, 1923.*

Whereas by an Order in Council bearing date the 10th day of August 1922, and entitled 'The Palestine Order in Council, 1922' (hereinafter referred to as the Principal Order), provision was made for the constitution of a Legislative Council in Palestine and for the election of part of the members of the Council :

And Whereas it is expedient to amend the said Order as hereinafter appears :

Now, Therefore, His Majesty, by virtue and in exercise of the powers in this behalf by the Foreign Jurisdiction Act, 1890, or otherwise, in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

- Title. 1. This Order may be cited as 'The Palestine (Amendment) Order in Council, 1923,' and shall be read and construed as one with the Principal Order.
- Elections to be null and void. 2. The elections held in Palestine before the commencement of this Order in pursuance of Article 23 of the Principal Order are hereby declared null and void.
- Amendment of Article 17 of Principal Order. 3. Article 17 of the Principal Order is hereby repealed and the following substituted therefor :—
17.—(1) (a) The High Commissioner shall have full power and authority, without prejudice to the powers inherent in, or reserved by this Order to His Majesty, and

¹ This Order came into force September 1st, 1922, on publication in the Official Gazette of that date.

* Dated May 4, 1923.

subject always to any conditions and limitations prescribed by any such instructions as may be given to him under the Sign Manual and Signet or through a Secretary of State, to promulgate such Ordinances as may be necessary for the peace, order and good government of Palestine, provided that no Ordinance shall be promulgated which shall restrict complete freedom of conscience and the free exercise of all forms of worship, save in so far as is required for the maintenance of public order and morals; or which shall tend to discriminate in any way between the inhabitants of Palestine on the ground of race, religion or language.

(b) No Ordinance shall be promulgated by the High Commissioner until he has consulted the Advisory Council as constituted on the date of the commencement of this Order or such other advisory body as may after that date from time to time be constituted by him with the approval of a Secretary of State.

(c) No Ordinance shall be promulgated which shall be in any way repugnant to or inconsistent with the provisions of the Mandate and no Ordinance which concerns matters dealt with specifically by the provisions of the Mandate shall be promulgated until a draft thereof has been communicated to a Secretary of State and approved by him, with or without amendment.

(d) No Ordinance shall be promulgated unless a draft of the same shall first have been made public for one calendar month at the least before the enactment thereof, unless immediate promulgation shall, in the judgment of the High Commissioner, be indispensably necessary in the public interest.

(e) His Majesty reserves to himself the right to disallow an Ordinance promulgated by the High Commissioner within one year of the date of promulgation and to signify such disallowance through a Secretary of State. Every such disallowance shall take effect from the time when it shall be promulgated by the High Commissioner by notice in the Gazette.

(2) From and after a date to be fixed by the High Commissioner in Executive Council, by Proclamation in the Gazette, there shall be constituted a Legislative Council in and for Palestine as in this Order provided, and any advisory body then existing shall be dissolved. The powers of the High Commissioner as defined and limited by Clause (1) of this Article shall continue in force until a Legislative Council as provided above shall have been duly constituted, when Articles 18 to 34 of this Order shall apply.

4. The Proclamations, Ordinances, Orders, Rules of Court and other legislative acts which have been issued or done by the

Validation of
Ordinances
issued since 1st
September
1922.

High Commissioner or by any Department of the Government of Palestine on or after the 1st September 1922, shall be deemed to be and always to have been valid and of full effect and all acts done thereunder and all prohibitions contained therein shall be deemed to be valid.

Amendment
of Article 23
of Principal
Order.

5. Article 23 of the Principal Order is hereby repealed and the following substituted therefor :—

23. The first general election of members of the Legislative Council shall be held at such time not more than six months after the publication of the Proclamation referred to in Article 17 (2) of this Order as the High Commissioner shall by Proclamation appoint. Within three months after the dissolution of the Council a date shall be fixed by the High Commissioner in Executive Council by Proclamation in the Gazette for the immediate holding of a general election.

Amendment
of Article 84
(i) of the
Principal
Order.

6. The words ' From and after the constitution of the Legislative Council hereinbefore provided for ' shall be inserted at the commencement of Article 84 (i) of the Principal Order.

Amendment
of Article 85
of the Prin-
ciple Order.

7. The words ' a member of the Advisory Council or other advisory body constituted under Article 17 (1) (b) of this Order or of the Legislative Council as the case may be ' shall be substituted for the words ' a member of the Legislative Council ' in Article 85 of the Principal Order.

Power
reserved to
His Majesty
to revoke,
alter or
amend present
Order.

8. His Majesty, His heirs and successors in Council may from time to time revoke, alter or amend this Order.

Commence-
ment of
Order and
publication
in Palestine.

9. This Order shall be published and proclaimed in Palestine, and the date of such publication shall be deemed to be the date of the commencement of this Order.

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